Fear and Ferment: Public Sector Management Today

John W. Langford, editor

The Institute of Public Administration of Canada
L'Institut d'administration publique du Canada

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Fear and Ferment: Public Sector Management Today

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Foreword

The Institute of Public Administration of Canada is a private non-profit organization of public servants from all orders of government: teachers, administrators and students in universities and colleges; and others interested in public administration. There are more than 4,000 members and subscribers.

Since its inception in 1947, the Institute's main goal is to contribute to the improvement of the quality of public administration in Canada. To achieve this, the Institute conducts, among other things, a broad range of research, seminar and publication activities designed to enlarge the body of literature about Canadian public administration.

The Institute's flagship journal, *Canadian Public Administration*, provides a chronological account of the development and evolution of public administration in Canada. The volumes in its Canadian Public Administration Series, its Monograph Series and the proceedings of its National and International Seminars contribute to an understanding of both public sector management and the administration of public policy. The Case Program of the Institute contains cases and simulations in Canadian public policy and management for use in university classrooms and for in-service training programs at all levels of government while its bibliography and supplements provide an easily handled reference tool for those engaged in the research and study of public administration. Finally its study teams, composed of both academics and practitioners, as well as its Research Fellow program, contribute to the literature on contemporary practices in Canadian public administration.

By joining with the Institute for Research on Public Policy to provide this offprint of the winter 1986 issue of *Canadian Public Administration*, the Institute is pleased to make yet another contribution to the literature of public administration.

Paul Leger
President
Institute of Public Administration of Canada

Foreword

For several years now the Institute for Research on Public Policy has undertaken and published studies on public sector management and the formation of public policy. In late 1985 this on-going work moved to a new and more active phase with a program of research and dissemination (including a variety of formal and informal seminars and videotape production as well as traditional publications) under the broad general heading of governability. This expanded program reflected a growing emphasis on the processes and institutions involved in making and implementing public policy, not only as determinants of actual policy outcomes, but also as expressions of underlying (and changing) community attitudes, preferences, and values.

At present this new research program involves more than a dozen projects in five areas: the role of the state; constitutional issues; the management of political and bureaucratic institutions; the citizen and the state; comparative studies of governability.

The subject matter of this present book fits squarely into this governability research program. In six other projects, the Institute is examining how public sector bureaucracies are being, or should be, managed. A number of the problems discussed in this volume will be pursued in considerably more detail in publications and video programs which the Institute will be producing over the next two years.

The evolution of public sector management is of course also a central concern of the Institute of Public Administration of Canada. This joint publication reflects the cooperative approach which the two institutes are taking to research on those aspects of the wider governability theme bearing on public sector management and bureaucratic institutions. The Institute for Research on Public Policy is delighted to join with IPAC to bring to a wider public this provocative set of papers from the National Conference on Management in the Public Sector.

A.R. Dobell
President
Institute for Research on Public Policy

TO MY PARENTS

PREFATORY NOTE

In early 1985 representatives of the British Columbia Government Managers' Association and the School of Public Administration, University of Victoria, began planning the conference from which the following papers emerged. The planning committee was determined that this conference would become an opportunity for middle-level public sector managers from all orders of government across Canada to think about and discuss problems relevant to them. As a result of this single-mindedness, some 250 public sector managers came together at the Empress Hotel from April 21 to 23, 1986, to reflect on the impact that contemporary changes in their environment were having on their work as managers. They were joined by a small number of academics, consultants and private sector managers.

The conference consisted of plenary sessions on restraint, contracting out, information technology, public access to information, conflict of interest, risk taking, employment equity and political rights. Each plenary session was followed by, on average, seven workshops where the participants were given a chance to come to grips with more specific issues related to the plenary theme. The ninth and final plenary session was a panel discussion on the question of whether or not a new model was emerging for the public sector manager.

What follows is a summary of the discussion at the conference and a collection of plenary and workshop papers grouped around the nine themes. The interaction at the conference, as the papers and the summary of discussion suggest, provided grounds for both optimism and concern about the public sector manager today. It is my hope that the wider dissemination of these papers will further stimulate the growing debate about the kind of public service and the type of public sector manager we want in Canada in the 1990s.

Obviously the conference and, by extension, this collection of papers would never have materialized without a lot of hard work and support. In the former category, my colleagues on the conference planning committee (Lucille Pacey, Stewart Goodings, Tom Lietaer, Bob and Heather Kucheran) deserve a special salute. Ken Huffman organized twelve student volunteers from the School of Public Administration to provide a précis of the discussions in the fifty-six workshops. The essence of these reports became the building blocks of the summary of discussion. Mervyn Brockett lent a sharp editorial pencil when I was drowning in mixed metaphors. And

Connie Niblock and Shirley Bailey worked their considerable magic with the Xerox 860 and the more traditional scissors and tape. In short, the whole exercise was very much a group effort.

As usual, the Institute for Research on Public Policy and the Institute of Public Administration provided an abundance of intellectual, financial and organizational backup through the good offices of Rod Dobell, Edgar Gallant, Joe Galimberti, Maurice Demers and Ken Kernaghan. The conference would never have become a reality without the very substantial financial and service support of the Government of British Columbia. Other financial assistance and services were provided by Air Canada, CP Air, the Bank of Montreal, Imperial Oil Limited, Pitney-Bowes, Price-Waterhouse and the Government of Yukon. In a period characterized by a retreat from philanthropy and educational funding, the generous support of these public and private organizations is particularly noteworthy.

John W. Langford, Institute for Research on Public Policy, Victoria.

John W. Langford
Kenneth J. Huffman

Fear and ferment: public sector management today

Public sector managers are under a lot of serious stress these days. Abrupt shifts in political priorities, new socio-economic realities, and the pace of technological change in the work environment are all creating new pressures. In most jurisdictions, tax revenues consistently fall short of expenditure requirements. Managers are forced to swallow the assertions that what they do is redundant, or beyond society's means, or could be better done by the private sector. Public sector managers are being told to adapt to the demand for more privatization of what for generations have been considered traditional publicly provided services. They are being asked to produce the remaining public services with fewer staff and fewer financial resources.

If the wider environment threatens the destruction of the traditional public service, it also promises miracle foods to a public sector manager hungry for new techniques to improve productivity and revolutionize the planning and delivery of services. The most widely vaunted technological fix is office automation. Public sector managers, like their private sector counterparts, are under pressure to "modernize." The problem for the manager is finding the elusive shared ground between the promise and the reality of information technology.

Not all the pressures for change flow from the coupling of economic exigencies with right-leaning governments. In the case of the call for more open government, the demands come principally from the new breed of broad-based pressure groups and the media. Both politicians and public sector managers are trying to cope together – rather than in opposition – with this new intrusion into the traditionally secretive processes of government.

The call for more open government is part of a wider public concern about the ethical standards practised in government today. Again, both politicians and public servants are trying to find ways to contend with what seems to be a never-ending parade of conflict of interest abuses. Similarly, a number of high profile cases have led to widespread popular concern about

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the ways in which managers and regulators take risks with public health and safety.

Public sector managers, like their private sector counterparts, are also being forced to adjust to encroachment on their turf – for so long white, middle-aged and male – by what has been described as the "rights-seeking" revolution in Canada. The social fabric of the country is being stretched, torn and rewoven to accommodate the constitutionally endorsed demands of women, native Canadians and the handicapped for management jobs. In a time of restraint and downsizing, this represents a severe challenge to the public sector manager. Similarly, in a development peculiar to the public sector, the manager is facing unprecedented demands from public servants to exercise political rights. The structural foundation of what is traditionally known as the "politically neutral" public service is being eroded by these new developments.

This conference was designed to provide public sector managers with a chance to share their views on the impact of these external forces on their jobs and their organizations. The summary that follows is an attempt to distill for the reader the essence of the discussions which took place in fifty-six workshops grouped around nine plenary sessions. We also offer some reflections, by way of a conclusion, on the general mood which fuelled the workshops and on the big question that underlay all of the discussions at the conference and formed the theme of the last plenary session: do we need a new model – a new "ideal type" – of public sector manager?

Restraint and downsizing

Given the experience of provinces in western Canada in coping with sharply declining revenues and the political imperative in many jurisdictions to reduce the scope of government, it is not surprising that workshops on this topic provoked keen interest. As Larry Jones's plenary workshop revealed, the revenue effects of restraint measures can be perverse, at least in the short term, as costs rise for severance, sick leave and other unfunded liabilities as well as for social welfare spending for displaced employees. In addition, the political imperative to cut may defy economic rationality. The closure of the regional offices of the British Columbia Ministry of Forests came in the face of solid analysis on the negative impact this would have on local businesses. The restraint measures also provide the opportunity to "neutralize" officials who have become bothersome to politicians.

Communication is a crucial factor in the successful implementation of a restraint program. First, the public has to be conditioned to the need for cuts in services (often with the added irony of higher fees) and secondly, employees should be kept informed if declining morale and productivity are to be minimized. Jim Armstrong ("Retrenchment at City Hall") described the 25 per cent reduction in staff of the City of Edmonton in 1982–83 and the information exchange involving the employer, employees and unions

which was set in place to assist those being "outplaced" and to reduce uncertainty for those remaining. Some of the problems which arose in Edmonton were attributed to the lack of trust between politicians and administrators, a theme that reappeared in David Sandell's workshop on "Quality Circles and Productivity Improvement." Supportive and trusting relations between management and staff are a crucial factor in maintaining or enhancing the morale and productivity of employees trying to do more with less.

Other workshops also dealt with the human resource impacts of restraint and downsizing. Virginia Greene ("Morale and Conditions of Restraint") proposed linking morale with management rather than restraint, thus viewing restraint as an opportunity for creativity and for managing public perceptions. It was recognized that creative opportunities would be more difficult to find in the delivery of legally mandated services. Her views on the possibilities of sustaining morale in the face of restraint were greeted with less than total enthusiasm by a number of participants. Herbert Kee addressed the issue of "Incentives and Rewards" and concluded that under restraint conditions monetary gains are unlikely, thus efforts should focus on non-monetary incentives such as flexible time off and enhanced job satisfaction.

Tim Plumptre ("Centralized Versus Decentralized Control in Restraint") suggested that cutbacks reinforce tendencies to centralization but central agencies often lack the resources to handle the increased demands. This view was also expressed in a later session on risk by John Blatherwick ("The Role of the Public Health Official"), who proposed delegation of resource management to managers who are more in touch with the needs of the community than central agency officials. Plumptre's suggestion that management should be allowed more discretion over the process of downsizing (e.g., through quotas) was echoed by John Howard ("Mixed Service Delivery: A Private Sector Perspective") who said that the difficulty of establishing a price-cost relationship for public services heightens the need for discretion to reach a "commonsense result." In a workshop on "Lessons from the Private Sector," David Zussman argued that the private sector is not better prepared for handling restraint than the public sector; however, the profit motive allows the private sector to react more quickly. Furthermore, in the private sector the stated reasons for restraint are likely to be consistent with the real reasons. This is not necessarily true for governments which often have overlapping or unstated objectives, such as the need to show leadership, or lower public expectations. Under such conditions, it becomes politically advantageous to be seen handing out pink slips even if the same result could have been achieved through attrition.

There are a variety of possible methods to reconcile the service delivery function with restraint, ranging from "faking" delivery to increasing fees and contracting out. Marilyn Callahan ("Faking Service Delivery") suggested that in a restraint setting legally mandated services are like fire

hydrants without firemen and equipment: the mandate is still visibly there, but there are no resources available to put it into action. Callahan believes that adopting a "political management" style – relying on close consultation with staff and constituents to mount a forceful argument with superiors about proposed cuts – can minimize the need to fake delivery or, at least, can minimize the decline in staff morale. John Johnston pointed out that in this connection "a slow yes, is also a no." In the plenary workshop there had been discussion of the observed phenomenon that long line-ups to receive social services are not related in the clients' minds to restraint. Clients prefer to "shoot the messenger" and blame the delay on the public servant.

Contracting out: a mixed blessing

As revenue sources fluctuate and political agendas cede to a priority to downsizing, privatization – largely in its contracting out form – has become an increasingly popular vehicle for providing services and lowering the "visibility" of government. John Johnston's plenary workshop raised a number of points concerning the relationships between private contractors and public service managers. Like others, Johnston argued for providing managers with more discretionary power to make – and occasionally blow – deals. While the public sector manager, unlike his private sector counterpart, faces the risk that his error will end up on page one of the local newspaper or in the Public Accounts Committee, Johnston advises managers to "take the opportunity and live with the consequences." Ironically, Johnston has found that private sector bidders often come to the table ignorant and have to be educated in negotiating a deal by public sector managers. Finally, Johnston noted that a contractor may bring a new set of values and managerial skills to a task, improving efficiency and effectiveness as well as enriching the job. He cited the contracting out of housekeeping in hospitals, a set of tasks hospital administrators and staff generally look down on but which a contractor will view as a specialized trade.

Other workshops following the Johnston plenary looked at the implementation side of contracting out. Bob Bish pointed out in his workshop that contracting out often results in cost reductions of 50 per cent; however, despite the fact that in government today inefficiency has become the current shibboleth, there is little evidence to suggest that public provision of services is any less efficient than private; the key factor is whether service delivery is monopolistic or competitive. Bish therefore recommended subdividing contracts to permit multiple participation by small operators, thereby avoiding the possibility that privatization would create new monopolies. He also suggested setting up a complaints procedure prior to implementation, and budgeting for extra monitoring costs. John Howard endorsed the notion that the need for good information systems becomes even more urgent when a public organization is engaged in contracting out.

Some of these measures could be useful in meeting concerns over accountability and the potential for patronage and collusion identified by Cliff Andstein's workshop on the "Union Perspective on Mixed Service Delivery." The union movement generally feels threatened by contracting out because the removal of the service monopoly also removes the monopoly on labour supply. Indeed, even where delivery alternatives are not being actively contemplated, the mere possibility acts as a lever to force increases in labour productivity and more favourable terms for the employer.

On balance, there were more negative concerns expressed in the workshops about contracting out than there were expressions of support. Cliff Andstein's workshop underlined the negative effect contracting out can have on employee morale. It creates a climate of uncertainty over the future and it leaves the impression that government is hiving off the winners (to appease and perhaps to enrich conservative supporters), and leaving a downsized public service to manage and deliver the more intractable and unsaleable programs. John Johnston's workshop pointed to the possibility that incentive systems can be skewed by privatization so that quality is sacrificed to efficiency.

While contracting for services overcomes some of the problems of in-house delivery identified in Bish's workshop, it can create a whole new set of measurement problems involving hidden costs and program outputs. Ted Harrison's workshop, "Farming Out Corrections," looked at the issue of quality of service and at the problems of evaluating outputs from statistics provided by the contractor. While the quality of contracted service may be lower, Harrison was more concerned that there is little seed money available for the testing of innovative strategies because contractors too are subject to restraint. As a result, the quality of future service may be less than optimal.

In an environment of contracting out, public servants need to develop a range of new skills. Just as John Johnston saw an educative role for public servants in teaching some bidders how to negotiate, Sandra Simpson ("Contracting Out: An Agency's Perspective") has found through her experience with the Elizabeth Fry Society that many agencies have no experience in contracting and that government does not provide the support to ensure that contracting is handled consistently. Simpson emphasized the importance of clearly defined roles based on good communications in the contract relationship. Johnston expanded on the need to include development of a skills network different from the old boy and more akin to feminist networking arrangements for mutual support. Jack Ebbels's workshop on "Writing an Effective Contract" focused on the deal-making skills of the public servant in negotiating and writing a contract.

One of the strongest messages coming out of the workshops on restraint and contracting out was the belief that neither phenomenon is temporary.

The cycle of revenue and expenditure fluctuations and politicians' preoccupation with the bogeyman of big government imply that the new skills public sector managers are learning are survival skills and will be useful for the foreseeable future.

Information technology as panacea

As governments find themselves in a leaner operating environment there is a more frantic search for methods to do better the things that are left. In the quest for improved productivity, information technology has been saddled with lofty expectations about the impact it can make on the job of the public service manager. However, as the evidence from the sessions on information technology suggests, these high expectations are *not* being realized. While technology is carving rapid change and advancement in many office-type functions, it is not yet up to the task of revolutionizing management.

In the plenary workshop Ted Grusec discussed some of the difficulties in implementing office automation, particularly the problems that systems analysts have in identifying user needs and translating these into specifications for hardware and software which the end-user will find both usable and useful. Grusec found that managers will put up with a lot of aggravation during the test phase of new office technology, but become frustrated when their expectations are not realized and productivity does not improve, often for reasons unrelated to the new technology. Grusec has observed frequent attempts to "automate out of a mess," as managers load all of their morale and organization problems on to the technology wagon.

Workshops by Bev Smith on "Expert Systems: The Pros and Cons"[1] and Newman Lam on "Software Compatability in Systems Design," revealed some of the limitations, as well as some of the challenges of work on the "frontier." Lam catalogued some of the problems of compatibility of software which users encounter when they have a variety of types of office equipment and software or obtain data from another source. These problems occur not infrequently in government operations where purchases of equipment have been made on a building-block basis. The problems are becoming more evident as the price of equipment declines to the point where individual managers have discretion over purchase decisions. Lam also pointed to the reverse kind of problem which increased compatibility creates, namely the corresponding decline in information security.

The Smith workshop focused on the limitations of expert systems, the primary one being, from the manager's point of view, the need for the user to be an expert in the uses and limits of the system. Because so much managerial skill is intuitive, it is unlikely that expert systems will duplicate

1 Bev Smith's workshop was based on a paper by the same title submitted by Chris Corbett. This paper is included in this volume.

management decision-making functions for quite some time.[2] However, expert systems are making an appearance in areas where the sequential nature of the decision process has been well defined.

The claims about productivity and efficiency gains from office automation are problematic. Ulrika Wallersteiner ("System Egronomics: Enhancing the People-Technology Relationship in Offices"), pointed to studies showing the elusiveness of productivity gains and the inconclusive findings as to whether there were reductions in the pressures on managers. Jill Davidson ("Tech Change: Boon or Bane for Professionals, Supervisors, and Middle Managers"), raised the issue of who receives any benefits from the technology. Unlike clerical workers, managerial employees do not seem to experience loss of independence and task variety. However, some managers find that their work loads increase, for example, when staff work shorter hours in order to avoid layoffs or if technology creates autonomous working conditions. Furthermore, in some situations the efficiency gains prove to be illusory, with the system costs outweighing savings. Ted Grusec pointed out, for instance, that some estimates suggest that office technology implementation will require double the amount of office space per employee.

Several workshops touched on the human resource impacts of technology and the need to deal with employee fears and concerns. Bart Cunningham's session on "Information Technology and the Quality of Working Life" mentioned the problems at B.C. Telephone where up to 50 per cent of the employees could lose their jobs over five years. For those that remain, individual discretion and freedom on the job will be reduced by the constant monitoring of performance that technology makes possible. For the rest, and for society in general, there are issues of the "right to work" and concerns over the lack of transferable skills among many of those being laid off.

Chris Slade ("Work Transformation and Employment Productivity"), noted the role changes that are occurring as executives sit at keyboards and secretaries alter their support role to other tasks. Bart Cunningham and Jill Davidson both observed that office technology will allow lower-level staff to take over some managerial functions, thus, in theory, leaving more time for managers to focus on planning and administration.

Ulrika Wallersteiner emphasized the major social and organizational changes that information systems imply and the need to examine more than the "functionality" of a system. The lack of productivity gains are tied to the failure to consider and involve those affected in the design of the office system. Ergonomics addresses factors which are crucial to productivity: convenience, health, physical environment and other "usability" criteria.

2 A recent article by Herbert Simon examines managerial "expertness" and expert systems in relation to the 50,000 "chunks" of relevant knowledge which chess grandmasters are estimated to possess. It is this knowledge gained over at least a decade which forms the basis for the intuition a chessplayer, or any expert, uses to make the initial hypothesis for a course of action. See "How Managers Express Their Creativity," *Across the Board* (March 1986), pp. 11-16.

The problems of implementing new technology are compounded by the environment of fiscal restraint. Budget decisions on new equipment are subject to a very short time horizon. Thus many of the factors which lead to disappointing results in efficiency and productivity are not addressed during the selection process.

Living with open government

As governments have become more involved in the economy and the society, the Westminster traditions of closed government and civil service anonymity have been challenged and, to a certain extent, modified. The most visible manifestation of the move to open government is the passing of access to information legislation in a number of jurisdictions. Workshop participants noted a change in the attitude of government towards the provision of information, with the gradual recognition that access is a right, not a privilege. Most of the participants agreed that open government is encouraged by the need to consult widely on complex policy issues. However, Frank Cassidy ("Closed or Open Government, the Public Servant and the Public") took a pessimistic view of progress on openness, arguing that consultation at present is a one-way flow of information in the direction of government. In order for public managers to be more effective, the bureaucratic culture needs to become truly open, with managers consulting and sharing useful information so that the public in turn can provide informed input to the policy process.

Several groups addressed the impact of institutionalizing openness through legislation and review bodies. There was some degree of consensus that the impact on the life of the public service manager had been minimal. Mitchell Sharp suggested that public servants might be inclined to exercise more caution in what they committed to paper; however, the extensive exemptions to disclosure in the federal act mean that frankness in policy advice is not constrained. Sharp and Murray Rankin ("Freedom of Information: What Managers Need to Know"), indicated that changes in the organization of files and improved standards of document drafting in anticipation of public visibility have led to more efficient and more effective government. The Access Registers are a useful management tool and the improved record-keeping has facilitated better internal communication.

Bruce Mann's workshop, "The Federal Information Coordinator as Meat in the Sandwich," dealt with the difficulties that departmental coordinators have within an organization where they are perceived as irritants with nothing positive to offer colleagues and where they often have difficulty getting the boss's ear. Murray Rankin added that the coordinators' positions make them susceptible to becoming scapegoats and may limit their mobility.

Since the federal access and privacy legislation was implemented in 1983 about 90 per cent of applications have been related to personal information. John Grace's workshop, "Freedom of Information: Privacy Issues," dealt

with the conflict between a public interest in open government and the individual's right to privacy of personal information. There was general agreement that privacy should be paramount except in narrowly defined cases where there is an over-riding public interest. In dealing with personal records, Grace suggested that managers focus on "fair information practices" (e.g., individuals consent to the gathering of personal information with the knowledge of why the information is being collected) and recognize that they are accountable for the practices.

A number of participants addressed the issue of the effectiveness of federal access legislation. Some, such as Mitchell Sharp, felt that the Access Act has succeeded in providing a safeguard against administrative abuses. The fact that a number of members of Parliament have used the act rather than the parliamentary route to secure information indicates that the legislation is working. Others, such as Bruce Mann and Murray Rankin, claimed that the blanket exemptions on advice to ministers and cabinet are too broad, frustrating or even nullifying the intent of the act. Frank Cassidy argued that officials tend to follow only the letter of the law, providing masses of undigested information to paralyse the public consultation process.

In jurisdictions with effective provisions for access to information, Marjorie Nichols ("Talking to the Press"), felt that the independence of the bureaucracy is protected and some of the pressures on bureaucrats to leak confidential information are relieved. The question of unauthorized access was also addressed by Robert McLaren ("Whistle Blowing: A Duty, Not an Idiosyncrasy"), who argued that once other avenues have been tried, a public servant has a duty to blow the whistle to protect the public interest. Many of the discussants were distinctly uncomfortable with this notion.

Conflict of interest: making it go away

Discussion of this perennial ethical dilemma was galvanized into life by the recent efforts of the federal government, in particular, to control conflict of interest. Jean-Pierre Kingsley in his plenary paper made a strong case for the utility of the detailed code of conduct which the federal government has recently applied to some 225,000 federal employees. Ken Kernaghan in his workshop, "Codes of Conduct," also offered support for written rules, which he argued send a message to public servants and help to educate the public about the ethical behaviour of public servants. Such rules, Kernaghan argued, must be fair and reasonable to be accepted by public servants, and they must be publicized and uniformly enforced to be effective. Davis Carvey's workshop on "Gifts and Bribes: The Purchasing Agent" noted the difficulty of the agent's position as a "boundary spanner" between the public and private sectors and the pressures to which he or she is subject. Carvey also emphasized the advantages of a written policy or code in providing consistency for dealing with problems, communicating a standard of

behaviour and providing a justification for the employee to "do the right thing."

But, despite substantial support for written rules, there was less than universal agreement on the issue of their effectiveness as tools to control conflict of interest. Discussion in several workshops brought to the surface the perception that public service employment was often a lot more complicated and problematic phenomenon than it had been a generation ago. Employment arrangements are more flexible, people come and go from the public service, and the operation of government is deeply penetrated by pressure groups. Such factors make the clear delineation of the public from private interest more difficult. Thus, in Maureen Taylor's workshop on "Moonlighting: The Practical Problems,"[3] it was argued that an activity which ten years ago was universally frowned upon is viewed now to be harmless to the public interest in most instances. In John Langford's workshop ("The Revolving Door: The Post Employment Practices of Public Servants"), it was pointed out how difficult it is to codify precisely what kind of work an ex-public servant can do without violating the public interest. Even more difficult is the development of workable enforcement mechanisms and penalties for offenders.

Randall Ivany ("An Ombudsman's Perspective"), argued that conflict of interest dilemmas should be dealt with internally. He questioned the extent of the problem caused by conflict of interest, having, apparently, seen few cases in his ten years as an ombudsman. Despite the fact that everyone knew of a number of celebrated cases in their own jurisdictions, this position was echoed fairly widely in the discussions. A number of participants argued that the public service suffered from a "spillover effect" from the political arena where conflict of interest seems to be a way of life.

Taking risks with the public: an emerging ethical dilemma

As society and its technologies have become more complex, risks to the public have become more manifest and government has responded to public concern with an expanded role in the determination and amelioration of risk. The demands on bureaucrats to determine what are acceptable levels of risk raise ethical questions related to the official "playing God" in attributing value to human life and deciding how risks will be distributed. Rod Dobell's plenary workshop addressed the question of how public servants should act in relation to risk. Should they make decisions about risk based on the opinions of the public as expressed in polls or on the numbers derived from formal systematic analysis? He supported the view that the duty of the public sector manager may be to use the polls to "sell" the analysis.

3 Maureen Taylor's workshop was based on a paper which she co-authored with Alan Filmer. The paper is included in this collection.

The problem with rational analysis is that it flies in the face of the observed behaviour of individuals. Rod Dobell and Jim McRae ("Hard Choices: the Management of Hazardous Goods"), pointed out that the public's attitude to risk is affected by a number of variables: time, space (i.e., individuals will accept more risk at home than at work), whether the risk is voluntarily assumed, the magnitude of the loss, and even how the question is framed. The situation for the public service manager is complicated by the fact that politicians may assume a posture of not accepting *any* risk in a situation affecting their constituents, or they may; accept a very high risk if the risk is not public knowledge. Jill Bodkin ("Protecting the Public From Risk"), suggested that in circumstances where politicians make decisions involving risk against advice based on rational analysis, the public servant may have to resign. Eike Kluge ("What is a Human Life Worth?") insisted that the public servant should not make decisions in terms of his or her own values, but rather act as a "proxy decision-maker" for the rights of the individual. In order to accomplish this task, an ethical public servant should seek "informed consent" through consultation wherever possible.

But does this not bring us around again to the same impasse? When consensus cannot be established through consultation, will not the public servant's attempts to elicit and balance the relevant values of all the affected groups be confronted by all of the conflicting perceptions and contradictory principles alluded to above?

The issue of individual privacy came up repeatedly in the workshops on risk. For example, public servants have to decide whether society's right to avoid unnecessary risk should prevail over the rights of pilots or AIDS victims to the privacy of their medical records.

Rick Brown ("Occupational Health and Safety: the Enforcement Dilemma"), and Jim McRae discussed strategies for dealing with risk in specific settings. Brown addressed the dilemma of employers putting their employees' health at risk and described three models of regulatory response in which the inspector chooses to act as policeman, politician, or educator respectively. McRae examined private sector strategies for the management of risk and applied them to the public management of hazardous goods, concluding that "risk pooling" is the best response.

Given that public servants do take a stand, Rod Dobell recommended that the approach to risk should involve a number of steps: using formal analysis; making value judgments explicit in matters such as deciding how to distribute inequities in risk or how to value lives; providing insurance and compensation to share the risks and reduce inequities; and providing an open process which encourages public input. John Blatherwick ("The Role of the Public Health Official"), stated that government should be more open in providing facts to the media. Jill Bodkin also proposed an open consultation process for the evaluation of risk and a process of disclosure by firms to the government and consumers so that informed judgments on risk can be made.

Managing the move to employment equity

The traditional male, white bastions of both the public and the private sector are being challenged by legislation on employment equity and by calls for affirmative action designed to achieve better representation for women, natives, handicapped and visible minorities in corporate and government organizations.

In the last decade the approach to securing employment equity has changed from voluntary measures focused on altering attitudes to new legislation and regulations aimed at changing behaviour. Women, especially, became frustrated at the lack of progress in increasing the representativeness of employment categories and many people came to the conclusion that voluntary efforts were bound to fail. The experience of Canadian National described by Louise Piché is typical. Expectations of change had been nurtured but change only occurred when senior management adopted the project and created the will to proceed and succeed. The crucial commitment of management was cited in several workshops as a key determinant of program success. One of the ways suggested to foster commitment would be to follow the Saskatchewan example of rating deputy ministers on their equity program as part of their overall evaluation.

Jule Morrow ("Employment Equity Planning"), described the factors necessary to achieve employment equity. In addition to executive commitment, they are: decision-making power within the process, awareness training, union involvement, data collection, and the designation of a single person to be responsible for implementation. Because the new federal legislation lacks sanctions, Morrow feels that pressure for implementation will have to come from below, within the individual organizations. She feels that a more interventionist approach of preferential treatment would be more effective. Doug Wilson ("Special Problems of the Handicapped"), also favours reverse discrimination to get over the systemic and physical barriers to hiring more handicapped. Wilson feels that through incentives to defray employer costs and efforts by managers to discern which components of jobs can be handled by the handicapped, more people could be hired. Wilson cited U.S. studies which indicate that the handicapped had a better than average safety, attendance and turnover record.

Several participants, including Louise Piché, mentioned the increasing bureaucratization which intervention brings. Piché said that under the employment equity legislation, CN will be required to file 72,000 items of information every year with the federal government. The administrative burden is one example of the extra tasks that will be heaped on to existing managers in many organizations during periods of restraint. Leslie Brown and Carol Nelson ("Women's Equity Employment Issues") and Louise Piché mentioned the difficulty of implementing employment equity during a period of restraint, the problem of maintaining any gains during layoffs

(which are often based on seniority) and the intractability of many unions when it comes to many issues involving equity; (Piché cited a letter from a union official which said that, "if Pierre Trudeau gave Canada the Charter, God gave the unions seniority").

One of the difficulties encountered in the advancement of women into upper management has been the shortage of qualified candidates. Both the federal government and CN had to go outside to recruit women for their senior management cadre. For organizations like CN, where the organizational culture dictates promotion from within, there is a real problem in bringing people in from the outside, at least in the early stages until "bridging" jobs or mentoring relationships can be established. Bill Gray ("Formalized Mentoring"), argued that affirmative action programs can still leave women and minorities outside the informal structures of an organization. As an alternative to the old boy network, Gray recommends a formal process of mentoring.

Bill Hanson's workshop on the "Special Problems of Natives" dealt with the additional problems that native peoples face under employment equity programs because of the clash between industrial and subsistence cultures. Hanson feels that to overcome the identity crisis natives working in a competitive labour market feel (which may not be too different from the pressures experienced by so-called "Superwomen"), it will be necessary for employment equity programs to recognize the legitimacy of a subsistence culture and develop ways of allowing it to co-exist with the dominant industrial culture.

The one clear message of the discussions of rights in the workplace was that there is no turning back. Expectations have been created and political will has been harnessed. The only question remaining is whether further government intervention will be required before there is widespread acceptance of the reality of employment equity.

Political rights for public servants

Concerns with the ethical behaviour of public servants in part reflect the move away from the Westminster traditions of an anonymous and neutral public service. In the context of the recent focus on the rights of individuals and the implementation of the Charter of Rights and Freedoms, new challenges are emerging to the limits placed by governments on the political rights of public servants. These challenges are focused on two aspects of political rights: political partisanship and public comment.

Michael Cassidy and Edgar Gallant debated the merits of expanding political rights. Cassidy expressed the view that the Charter of Rights is the issue and that in a pluralistic and heterogeneous public service the principle of neutrality should not generally be allowed to override individual rights. Cassidy claimed that it is wrong to equate political participation with political partisanship. Gallant argued that the paramount concern was to

assure a politically impartial public service and not to provide for the individual need to engage in partisan activities. If you focus on political rights you run the risk of creating a public service characterized by what Bernard Ostry colourfully described as a "norm of obsequiousness," and "politicized mediocracy." Ken Kernaghan in his paper and workshop focused attention on the deleterious effects of allowing the public servant too much political freedom. These include: damage to the trust relationship with political masters; threats to career advancement; exploitation by politicians or administrative superiors; and a loss of public confidence in the impartiality of the public service. Kernaghan believed that a significant erosion of the convention of neutrality would also have a deleterious effect on other principles (such as ministerial responsibility).

Accounts of the situation in two provincial jurisdictions further polarized the discussion. Michael Decter ("Political Rights: A Manitoba Perspective"), argued that the relatively permissive environment for political rights in Manitoba has not eroded the merit principle. Decter's view was that the democratic process should be paramount and that it is appropriate to give latitude to public servants as long as their activity does not inhibit them in the conduct of their jobs. Norman Riddell ("Policies on Political Leave"), believes, by contrast, that the Saskatchewan practice of allowing thirty-day leaves of absence for public servants wishing to run for office or actively campaign has contributed to a public perception that the Saskatchewan public service is *not* politically neutral.

Bonita Thompson's workshop on "The B.C. Experience: The Government Managers' Association" dealt with the relatively open environment of political rights in British Columbia and how the association has chosen to stay out of any political or public forum and to deal directly with bureaucrats who are charged with affecting the managers' interests.

Most of the participants, including those who supported continuing restrictions on political activity, were in favour of some easing of the limits on public comment by public servants. The Supreme Court of Canada concluded in last year's decision on the Neil Fraser case that public servants enjoy some freedom to criticize their government employer, but this freedom is not absolute. Both Kernaghan and Stewart Goodings ("Making Public Comment"), infer from the Fraser judgment that public servants may expose, without censure, government wrongdoing. Goodings developed some criteria for acceptable public comment which included: comment must not be related to one's job responsibilities; lower-level employees should have greater discretion to speak out; criticism is more acceptable if the public servant is acting as spokesperson for some organization; and policy criticism will be tolerated more than criticism of individuals.

Much of the current focus of interest on political rights revolves around court challenges to the existing rules. John Kilcoyne examined "The Impact of the Charter of Rights and Freedoms" on public servants' rights and

speculated that the courts protect fundamental rights but will probably sustain some limitations on political rights. Kilcoyne suggested that criteria such as the position of the civil servant, the nature of the duties, the type of partisan activity and the manner in which the activity is conducted will influence the extent of the limitations. One of the problems confronting proponents of the neutrality tradition before the courts is the onus on them to show that the exercise of political rights by public servants will actually cause a problem. Much of the argument thus far rests on intuitions, rather than hard evidence, about the cumulative impact of individual actions on public perceptions about the neutrality of the public service. This is a difficult argument to win. Whatever lines the courts actually draw, it seems certain that governments which presently take a restrictive approach to political rights will be forced to revise their rules and public sector managers will increasingly have to contend with a more "politicized" public service.

Moods and models

No modern effort to record the views of a group of managers would be complete without an attempt to capture the collective mood or "corporate culture" which underpinned the two and a half days of discussion. There are, as with everything else, a number of sides to this phenomenon. On one side, as we have reported, the participants engaged in a series of often very positive dialogues about the challenges they faced in 1986. Alternative causes, strategies and tactics were energetically debated. On another side, we must also record our sense that many participants appeared dispirited and cynical about the changes in their work environment and exhibited signs of substantial insecurity about the future. These participants seemed to view their changing environment as the collapse of a civilization, rather than the dawn of a new era.

At the root of the latter mood is the widely shared belief that public service is little valued in 1986. While public servants have never enjoyed the highest status in the community, this generation of middle and senior managers for the most part joined the public service when government was playing an increasingly important role in the society and the economy. By extension, their place in popular esteem was elevated. In the "new reality," government is reviled even by the politicians who lead it and the public service is portrayed as parasitic, overpaid, inefficient and expendable. Government is now part of the problem, not part of the solution. This is not a state of affairs likely to enhance the public servant's sense of legitimacy and self-esteem.

If this swing of the political pendulum explains the general tone, the mood is further soured by the starvation effect of restraint. Many public servants are always unconsciously getting ready to be laid-off or retired early. Most line managers face the reality of fewer financial and human resources, and then they are expected to provide the same level of service as last year.

Moreover, despite the rhetoric of decentralization, they usually have less rather than more authority than they enjoyed in the glory days of the last two decades. Restraint has led to a centralization of decision-making and, for most public servants, made a mockery of the modern notion of diffused "responsibility centres."

Even without restraint the trend is everywhere towards more centrally defined and enforced rules to fence in the public servant: rules about conflict of interest, post-employment practices, access to information, political activities, relations with the press and the public, employment equity, computer purchases and risk-taking – to name only some of the areas dealt with in this conference. What from some perspectives may be viewed as democratic or even (in the case of the enforcement of employment equity) liberating developments, are seen by many public sector managers as signs of scapegoating and are viewed with suspicion bordering on paranoia.

The last factor contributing to the low morale at this gathering of public sector managers was the evidence presented in so many discussions of the demise of rational analysis in government. A public servant by tradition takes pride in the notion that the very essence of his or her job is the professional capacity to give expert advice on matters affecting the public interest. Time and again, managers were reminded of the growing indifference to analysis as a component in policy determination or decision-making. In Ottawa and many provincial capitals, political intuition and the "evidence" of polls have displaced policy analysis. More importance is attached to the ability to "sell" an initiative or test its "marketability" than the skill to determine whether it will actually achieve the desired goal.

These reflections on the dark side of the conference mood lead us finally, to the question which was the focus of the last plenary session: do we need a new model of public servant for the decade ahead? The participants were again of two minds on this issue. A substantial group clearly subscribed to the thesis propounded most notably by John Johnston and Michael Horsey that the modern public servant needs new skills. The new manager must be creative, entrepreneurial, prepared to take risks, able to "cut a deal," more responsive to the clientele, technologically "tuned-up," and capable of selling the "product." Such a manager would also be politically flexible and unencumbered by fixed views of the public interest. A manager exhibiting skills drawn largely from the private sector treasure chest is beyond doubt a new type of public servant. Ironically, this new manager would not be inclined to see the public service as a permanent career.

In at least implicit opposition to this model were the sceptics and traditionalists, many of whom would appear also to be the cynical and the dispirited of the preceding paragraphs. The least cynical and dispirited amongst them, such as Bernard Ostry and Mitchell Sharp, spoke up strongly in favour of "going back to the future." They supported the enhancement of a more traditional model of public servant grounded in values such as

responsibility, accountability, expertise, objectivity, balance and neutrality – not to mention a strong belief in public service *as service*. They were sceptical (if not angry) about such modern phenomena as contracting out and also about the more general proposition that the importation of private sector culture and techniques would "fix" the public service.

This conference and the papers it spawned do not provide an answer to the question, whither the modern public servant? They do, however, suggest that a substantial debate is developing around this question. In the pages that follow you can relive the implicit clash which enlivened the entire conference – between those who see in the future the emergence of a new, buccaneering, public sector manager equally at ease in the private and public domains, and those who are fighting a rearguard action (and such actions are not necessarily doomed) on behalf of the traditions of a permanent, politically neutral, expert public service which have endured since the nineteenth century.

L.R. Jones

Coping with revenue and expenditure constraints in the provincial government context

A comparison of restraint management strategies among Canadian provinces indicates significantly different approaches to budgeting under conditions of financial stress. This paper compares provincial strategies along several dimensions, including the integration of expenditure control procedures into the formal budget process, and the degree of control achieved. In addition, I shall look at the experience of selected provinces with respect to employment policy, evaluation and marketing, decision authority and participation, and the role played by political ideology. I have attempted to situate the 1983-85 period within a broader context spanning the past ten years. The expectation that trends and approaches developed in the period 1975 through 1983 would be sustained into the present has not been borne out in all provinces.

Control capacities in provincial budget processes

Differences in budgetary strategy for coping with financial stress reflect the different approaches to the process of budgeting employed in provincial governments generally.[1] For example, Alberta uses a modified program budget methodology, with A budgets representing base, B budgets an enriched base and X budgets providing for reductions in base. This is similar to the way in which the federal government managed the expenditure budget prior to the introduction of the Policy and Expenditure Management System (PEMS) in 1979.

British Columbia uses a modified zero-base budget approach with the submission and review of decision packages containing programmatic information by budget units. In theory, both X and zero-base approaches provide rational procedures for achieving budget reductions.

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1 These conclusions are based in part on information provided by Allan Maslove, Michael Prince, Bruce Doern, *Federal and Provincial Budgeting: Goal-Setting, Coordination and Reform* (Toronto: University of Toronto Press, 1986) chapters 6, 7, 8, 9 and Appendices. This book was prepared as a study for the Royal Commission on the Economic Union and Development Prospects for Canada (Macdonald Commission).

Manitoba altered its approach to budgeting in the early 1980s, moving from centralized review of departmental "wish lists" to a process that relies on decentralized departmental planning. Departments' operating plans are reviewed before budgets are submitted. Three-year operating plans are prepared according to a format and set of instructions laid down by the Department of Finance and Treasury Board, and departments are free to establish their own priorities within this framework. In the final phases of budget preparation and decision, the government has "repriorized" expenditures recently to assert its restraint and reallocation objectives. Manitoba presently is using a modified policy and expenditure management system similar in methodology to the federal system except that it has not introduced the Ottawa practice of using expenditure envelopes to control spending. However, budgetary proposals are reviewed within a "sectoral" format similar to the federal PEMS.

Nova Scotia employs a modified zero-base budget approach called the Management Planning and Budgeting System (MPBS). The emphasis of this system is on providing information about the effectiveness of spending and programs in the base, and carrying out analysis of the benefits and costs of existing programs relative to alternative programs. The MPBS is intended to integrate planning, budgeting, expenditure control and evaluation. Departments are required to state minimum program and service spending levels with high, medium and low estimates for current services. All spending packages are ranked according to normal ZBB procedures, with the ranking process being extended not only vertically within departmental budgets but also horizontally across departments.

Ontario uses a program budget format within a fiscal framework established by Treasury Board and an expenditure plan drawn up by the Management Board. The premier uses the Program and Planning Board of Cabinet to set budgetary priorities in response to the fiscal strategy outlined by Treasury. Expenditure ceilings are assigned to departments and an aggregate ceiling is set for the entire government. Individual ministries specify the program outputs that may be expected from alternative spending levels. Ontario's program budgeting format is designed to identify clearly the programmatic consequences of various funding levels. It operates essentially as a base-plus increment system, augmented by a more detailed review of program outcomes than normally obtains under budgeting on the base. Quebec's program budgeting system is similar in approach to Ontario's, with emphasis on longer-term program and policy directions.

Saskatchewan has recently attempted to improve the planning dimension in its budgetary process and to increase the capacity for expenditure control at the centre. In the estimates process the Treasury first specifies maximum spending levels by department and expenditure category, and then targets proposed reductions in department proposals through what is termed an "alternative levels" approach. The Treasury Board Division within Finance

follows the traditional pattern of dividing this budget into A base and B increment components. Budgetary priorities are set by the premier and cabinet, assisted by a management committee composed of elected officials and two senior government managers. The Management Board has attempted to assess the effectiveness of current programs and the scope for reductions and reallocation of resources. The Saskatchewan budgeting process is thus essentially a programmatic base budgeting system with similarities to the systems employed in Ontario and Quebec.

In summary, the budgeting systems in place in the provinces of Alberta, British Columbia, Nova Scotia and Saskatchewan all include formal procedures to facilitate the imposition of expenditure control, through mechanisms such as X budgets, zero-base budgets, or targeted ceilings and reallocations of the base. However, Alberta and Saskatchewan have used these procedures rather sparingly to date while British Columbia and Nova Scotia have used the formal budget process to impose significant expenditure reductions. In Manitoba, Ontario and Quebec, the integration of budgeting, planning and priority setting by central bodies enables control to be exercised directly, but it is less comprehensively defined within the formal budget process than in some other provinces. Manitoba's use of a modified PEMS system places it somewhere between these two groups in terms of the integration of control procedures with budgeting

Varying degrees of restraint: 1983–85

Generally, in comparing seven provinces over the period from 1983 to 1985, the least extensive restraint policies were applied in Saskatchewan and Manitoba; moderate restraint programs were implemented in Alberta and Nova Scotia; and more significant measures were applied in Ontario and Quebec. The polar extreme for the sample is represented by British Columbia, where stringent measures were carried out in several successive budgets.

British Columbia's approach to expenditure retrenchment is *sui generis*. Within two budget years British Columbia, according to one measure, reduced government employment by about 25 per cent. No other province has attempted to move as quickly to reduce spending in selected areas of the budget in order to redistribute spending towards other areas. Ontario and Quebec have reduced employment and the rate of expenditure growth, but more gradually and less dramatically than British Columbia. Nova Scotia may be placed in the intermediate category along with Ontario, but has tried to smooth budgetary adjustments by avoiding significant reallocations or redirection of policy. Salaries of government employees have been a principal target for control in Ontario and Nova Scotia. Quebec can be said to have attempted moderate expenditure control, particularly through salary roll-backs and staffing cuts, yet the politics of budgeting in Quebec have frustrated the achievement of any overall budget restraint.

Alberta has made some significant reductions in the growth rates of public employee salaries similar to Nova Scotia but, like Manitoba and Saskatchewan, has not felt the need for more substantial reductions in expenditure. The governments of Saskatchewan and Manitoba appear to have reached a crossroads along the route to expenditure control, recognizing in 1984–85 that the size of their deficits will require more attention to levels of spending and debt in the preparation of the 1985–86 budgets. It seems likely that both provinces will attempt to introduce moderate to significant expenditure control measures in the next fiscal year. Further, while restraint and redistribution appear to have stabilized in British Columbia, the need to reduce the deficit signals more significant cuts, as is the case in Ontario. Nova Scotia and Quebec may be expected to continue moderate-to-significant expenditure reduction measures, while it appears that Alberta will continue to draw on revenues from its Heritage Fund to hold its deficit in check. The capacities of both Alberta and Saskatchewan to rely on Heritage Fund revenues fluctuate with changes in prices and the demand for oil and gas.

Provincial strategies for managing financial restraint have reflected the nature of political and economic conditions. Profiles of provincial government approaches to restraint indicate the extent to which these characteristics have influenced strategy. Perhaps the best example of this is British Columbia where, despite the worsening deficit position, government officials appeared to ignore the need for expenditure control in the province until after the premier's re-election in 1983. However, after the Social Credit election victory of July 1983, the government announced a sweeping program of rapid expenditure cuts, budget reallocations, program modifications and employee terminations based in part on political ideology and in part on the need to stimulate economic recovery and development.

Financial stress management actions prior to 1983

The actions taken by selected provincial governments to manage financial stress prior to 1983 are outlined in this section. Provincial strategies for the period from 1983 to 1985 will be summarized subsequent to the analysis of the earlier period.

After experiencing periodic budgetary scarcity in 1968–69, Alberta government revenues and expenditures grew rapidly through 1975. From 1976 through 1983 Alberta attempted to constrain the growth of government in the face of rapidly growing Heritage Fund surpluses derived from oil and gas revenues. At various points during this period the province attempted to place ceilings on annual expenditure increases (particularly for education and health), to slow the employee salary growth rates, and to limit increases in provincial government employment. In addition, the province maintained a policy of not drawing on Heritage Fund revenues to

support provincial government programs and services, although this policy was abandoned after 1982, as will be noted. Alberta also successfully instituted efforts to increase its income from investment during the 1975–83 period.

In common with Alberta and the other provinces, British Columbia enjoyed rapid growth in government employment, in revenues and in expenditures during the latter half of the 1960s relative to the rest of the post-WWII period, and also had a burst of budget growth during the period 1973–75 due to the increase in inflation rates at that time. From 1975 to 1982 the government selectively attempted to stabilize or reduce taxation levels, to contain spending growth within the rate of change in GPP, and to hold down increases in public employee salaries and employment. However, at the same time, it increased spending on capital infrastructure in what has been described by provincial officials as counter-cyclical economic management. The impact of these expenditures on budgets after 1982 will be noted subsequently.

Manitoba tried a number of initiatives to exert tighter budget control during the period 1975–82. In 1975–76 across-the-board cuts as well as specific program reductions were ordered by the premier, although the aggregate amounts involved were relatively slight. In 1977 a new premier declared spending to be out of control. Six different task forces with membership that included executives from the private sector proceeded to recommend changes and reductions in education, health and crown corporation funding as a means to increase government efficiency. It was suggested that business leaders gained new respect for government and public service operations as a result of this experience. Provincial spending growth was held relatively in check for the next two fiscal years despite public protests. During the period 1979–81 expenditures started to grow more rapidly while recession reduced revenue growth. Some restraint was implemented in education and health in 1981 as a result of reduced federal transfer payments. A new government more sympathetic to the provision of public services faced a growing deficit in 1981–82. Expenditures in 1982 and 1983 grew substantially. Prior to 1981–82 the province had attempted to restrict salary increases of government employees without much success, and this trend continued through 1983. Some reductions in salary and employment growth rates were realized.

Due to the pressure of continued financial stress, Nova Scotia initiated new measures to control its expenditures and to generate new revenues from 1975 on. A condition of chronic and acute scarcity accurately characterizes Nova Scotia's predicament, past and present. Throughout this period the province attempted to constrain the growth of expenditures, to generate more revenues without significant increases in taxes, and to minimize government borrowing and deficits. Government employee salary increases were limited and growth of public employment was curtailed. Over the en-

tire period, but particularly since the late 1970s, Nova Scotia has imposed gradual but consistent expenditure restraint rather than forcing dramatic cutbacks in employees and services. While the contribution from federal government transfer payments has eased the financial burden somewhat, reduced federal transfers for education, health and other social services in the early 1980s exacerbated Nova Scotia's financial malaise.

In 1975 Nova Scotia strengthened Treasury Board's control over government staffing levels, travel and related entertainment expenditures. Treasury Board approval was required for full-time staff appointments, position reclassification, overtime pay and temporary or casual hiring. Additional constraints were placed on general government purchasing and inventories, land acquisition, and grants to local governments. In 1976 some measure of discretion was shifted to departments and agencies, but the role of Treasury Board has been more prominent in expenditure restraint since that time. The Restraint on Expenditure Program (REP) continued through 1979.

In 1979 the REP was replaced by a government "action plan" which called for the use of zero-base budgeting and the installation of a new planning and budgeting system. Two new permanent boards of the Nova Scotia executive council were established: the Policy Board and the Management Board. Policy Board responsibilities included development and recommendation of policies and priorities to the executive council. The Management Board became responsible for control of the internal operations of government including administrative systems, budgeting and personnel. The action plan also established a new accountability system to monitor and control revenues, expenditures and encumbrances on an on-going basis.

In 1982 the premier's economic review emphasized two major personnel expenditure restraint approaches: the moratorium on new hiring established earlier that year would be continued, and position vacancies resulting from retirements, resignations and other types of attrition would be frozen or eliminated. Thirty million dollars in government savings were targeted for 1982–83, including reduced spending on government publications, advertising, surveys and other studies and travel expenses. New controls and monitoring procedures covering government purchasing were also announced. Later in the fall of 1982 the Nova Scotia cabinet imposed a 6 per cent limit on salary and benefit increases for one year. No staffing reductions were announced, but all new labour contracts were to be completed before the end of February 1983, with the intention of limiting labour costs into the next fiscal year.

In line with other provinces, Ontario has laboured under some degree of financial stress for more than a decade. The province began to budget more conservatively in the early 1970s and by 1975 had attempted to cut government employment, reduce the burden of regulations and increase public sector productivity in an unrealistic attempt to contain inflation. Both the

U.S. and Canadian federal governments were engaged in similar attempts. In 1977 Ontario introduced a plan to balance its budget over a five-year period in response to criticism that the province had been out of balance since 1969–70. An attempt was made to reduce government employment by one thousand positions following a 2.5 per cent cut in 1976. In 1978 further staffing cuts were requested along with tightened control over salary increases and non-wage spending. The balanced budget goal was not realized, despite the attention given to expenditure restraint, and by 1981 the deficit had grown significantly. Expenditure demands, fuelled partially by inflation, grew in the period 1979–81 to the extent that Ontario increased its annual and total deficit levels considerably in the period 1981–83.

In 1982 and 1983, a new salary and wage control program was initiated and further staff cutbacks were mandated. Unlike the Atlantic provinces and some of the other provinces, Ontario has not been able to rely on federal transfer payments to help balance its budget. However, the size and income mix of its population ensures stable or increasing social service demand. This fact is revealed in health care expenditures, for example, where Ontario's spending per capita is highest among all Canadian provinces. Efforts to reduce health care, education and other basic social service costs characterized Ontario's management of financial stress in the period 1980–83. Passage of an inflation restraint act in 1982, creating a board to monitor and control salary and non-salary price increases, is an example of the means used by Ontario to cap government spending. The province has also employed zero-based budgets, sunset laws and increased control by auditors to achieve this end.

Quebec also has attempted to control social service spending over the last decade and longer. The pressure to keep pace with inflation in the period 1973–75 had significant impact on both Ontario and Quebec. Throughout the 1970s Quebec attempted to maintain relative parity between the growth rates in GPP and increases in government expenditures. Deficit control was also a continuing objective. In successive budgets from 1977 through 1979, Quebec attempted to limit growth in government expenditures and the deficit, but to little avail. However, in 1979 and again in 1980 the province adopted more extreme measures to control expenditures. Provincial departments and agencies were instructed by the Treasury Board to reduce employment by 2.5 per cent and to hold public sector salary requests at or below the level of inflation. In the period 1981–83 attempts were made to restrict government employee salaries and benefits, to reduce employment and to impose controls over social service spending while emphasizing efforts to stimulate public sector productivity. Total government employment in Quebec was reduced by 3.1 per cent in 1981–82 and 0.6 per cent in 1982–83. In this province, productivity increases were sought in part by maintaining service output standards in the face of moderate reductions in expenditures.

Expenditure control has been frustrated partly by the weakened condition of the Quebec economy. Because the provincial economy has experienced periods of moderate to severe recession since 1974, and particularly since 1980, long-term demands for welfare and other social services have increased. In addition, Quebec has sought to maintain service quality and to implement some new initiatives in education, requiring some increase in expenditure levels. The spiralling cost of health care has contributed to provincial financial stress. In addition, the power of public sector employee unions to resist efforts to contain salary and benefit expenditures has posed a continuing problem for provincial restraint advocates. In part, public employee salary and general government spending increases have been financed by tax increases and federal transfer payment support.

The province of Quebec has seen the overall level of its debt increase while the rate of increase has declined. Since 1981 Quebec Treasury Board control has been strengthened in an attempt to counterbalance the politics of expenditure growth and to provide better coordination of collective bargaining negotiations in the government. In addition, Quebec has attempted, like Ontario, to reduce the overall level of provincial subsidies, loans and borrowing on behalf of crown corporations as a means of controlling its deficit.

Saskatchewan did not experience the same level of financial stress as Ontario and Quebec over the last decade generally, but did introduce a number of measures to control expenditure growth. In the period 1975–81 Saskatchewan attempted to contain government expenditure growth at or below the level of inflation. New oil and gas revenues created a Heritage Fund surplus and financed subsidies and loans to crown corporations. Improvements in budget control were attempted through the separation of central government planning and budgeting functions. Expenditures on new programs required a trade-off in the form of reductions elsewhere in departmental and agency spending.

In the period 1982–83 Saskatchewan launched a set of more formal expenditure control efforts. Budget reductions across the board and in selected departments and agencies were implemented in this period along with a policy of holding open some vacant positions, deferral of capital maintenance and tighter budget accountability both in pre- and post-spending audits. In addition, significant tax increases were introduced in the 1982–83 budget, including those on retail sales, income and tobacco. A payroll tax for health and post-secondary education was introduced to make up the loss in federal aid. A new program was started to provide development assistance to small business. A series of internal economy measures were instituted in 1983 along with expenditure reductions in travel, supplies, equipment, advertising and other non-salary items. Involving senior management personnel from departments and agencies in the negotiations with Treasury Board has been tried as a means of concentrating the bureaucratic mind on the urgency of spending control.

A budget that imposed expenditure guidelines and required the preparation of alternative program support levels was in force in Saskatchewan from 1980–81 through 1983 and continues to the present as a means to control spending over non-salary program service delivery costs, institutional grants (e.g., education), payments to individuals (including income security), third-party grants and capital construction. In addition, efforts were made in 1983 to hold down government employee wage increases. Two major employee unions were held to wage increases of 6 per cent and 3 per cent, below levels approved since 1975. An early retirement program was introduced in 1983 as a means of increasing salary savings through voluntary attrition. The province combined expenditure control with new spending initiatives in its economic recovery program introduced in late 1982. Broadly speaking, Saskatchewan is a late arrival to expenditure restraint relative to most other Canadian provinces. It is only since the period 1981–82 that Saskatchewan has had to practise serious restraint, but the need has grown more serious each year.

Past expenditure patterns and restraint practices in Canadian provinces provide some sense of perspective for understanding the more recent responses to conditions of financial stress. It is this more recent experience that I will next address.

Analysis of provincial government restraint initiatives in 1983–85

A review of attempts by provincial governments since 1983 to deal with financial stress suggests that provinces may be divided into proactive and reactive categories. British Columbia and Nova Scotia in particular fall into the proactive group. However, the impact of their proactive strategies on the funding of social programs has been dramatically different. The provinces of Alberta and Ontario have also been proactive, although Alberta has experienced less financial stress than other provinces.

Saskatchewan and Manitoba have adopted a more passive and reactive posture toward financial stress management. In part, this may be explained by the fact that it is only recently that budget deficits have grown substantially larger in these provinces. There is also the question of how far political ideology has been an influence in resisting cutbacks in social programs and service. Quebec and Nova Scotia seem to alternate between an active and passive stance with respect to coping with financial stress, primarily due to the lack of success which has accompanied their attempts to impose greater budget control. The politics of budgeting have worked against control, although there is considerable room for disagreement about the relative degree of Quebec's and Nova Scotia's passivity. A detailed review of British Columbia, Saskatchewan, Manitoba and Nova Scotia, provided elsewhere, reveals significant differences in (a) overall financial stress management strategy, (b) employment policy, (c) marketing the need for budgetary con-

trol, (d) decision authority, (e) participation in budgetary decision-making within government, and between government and interest groups, and (f) the impact of political ideology on strategies for the management of financial stress.[2]

An analysis of provincial efforts at expenditure reduction and revenue enhancement from the early 1970s through 1985 leads to a number of conclusions on provinical government management of financial stress. For example, while most of the provinces studied recognize that the prevailing financial stress conditions resulted from revenue and expenditure imbalances, not all of them have responded with strategies designed to reduce expenditures significantly, or to enhance revenues, or to find other ways of reducing budget deficits. For some, the political unpopularity of restraint, and ideological reticence over reducing government, in a context where provinces are not required by law to balance their budgets annually, have resulted in some degree of avoidance behaviour regarding the extent and seriousness of financial stress conditions. As of the end of 1984 at least four provinces – Manitoba, Nova Scotia, Quebec and Saskatchewan – appear likely to require some reappraisal of their policies and strategies for financial stress management. Deficit levels in other provinces provide similar signals.

Financial restraint and control are seldom politically attractive for elected officials. Alberta, British Columbia, Ontario and to some extent Manitoba, have sought to condition public opinion about the need for restraint. However, these efforts have varied considerably in intent and execution. In British Columbia the government announced and implemented its strategy very rapidly and, partly as a result, encountered considerable public resistance to its proposals. Government officials believe that such a strategy was necessary in order to condition expectations among the general public, and among public and private sector unions, regarding the necessity for government budgetary reductions and programmatic resource redistribution. However, while the government succeeded in redistributing spending and in reducing government employment and employee salary increase rates, the longer-term success of this strategy remains to be evaluated in its political and social dimensions. Other provinces have moved more cautiously in implementing financial stress management policies and measures. Alberta, Ontario, Quebec and particularly Nova Scotia have applied financial stress management controls more smoothly over a longer period, although in some instances specific program reductions and policy changes have been introduced abruptly in these provinces as well.

Rapid shock treatment appears to raise public resentment more than gradual attrition, judging by the contrast between the British Columbia experience and the other provinces studied. Still, rapid policy implementation

2 L.R. Jones, "Financial Restraint Management and Budget Control in Canadian Provincial Government," CANADIAN PUBLIC ADMINISTRATION 29, no. 2 (Summer 1986), pp. 259-81.

also appears to provide some important advantages to governments seeking change. These include providing less response time for interest groups and opposition parties to marshal resistance, avoiding the need for compromise, and polarizing public opinion so that the constituency in support of government cutback actions is mobilized. The support from this constituency appears to be very important in overcoming resistance to government proposals, as can be seen in the B.C. example. In other provinces where budget cutbacks have been made, the necessity for compromise with labour unions and other groups appears to have weakened government efforts to impose expenditure control. Quebec, Manitoba, and to some extent Ontario and Saskatchewan, may be regarded as examples of this condition. However, in British Columbia and elsewhere it should not be overlooked that public resentment over program reduction was directed as much, or more, at the choice of targets for reduction, as at the strategy of rapid execution. The B.C. example also suggests that expenditure cuts may be promoted as a necessary response to deficits when, in fact, they are also designed to change spending priorities.

The impact of government financial stress management on public employment and compensation levels has been significant. In most provinces the rates of increase in employment and salaries have been reduced. Further, in several instances employment and/or salaries have been reduced, as, for example, in British Columbia and Ontario. In addition, experimentation with privatization, contracting out and the use of temporary personnel in place of permanent civil service employees has increased in most provinces.

Restraint management leads to centralization of decision-making authority and limitation of public and government employee participation in decision-making. While this seems to be the general experience, there are several exceptions, most notably in Manitoba and Nova Scotia and to an extent in Ontario, where participation has been sought in order to assist in the process of setting or marketing restraint prioirities.

Factors related to political feasibility, risk and ideology are more important in influencing financial stress management strategies than program or policy evaluation of government efficiency, productivity and effectiveness. While some budget reduction decisions have been made on the basis of evaluation, the majority of reductions have been made either across the board (which reduces political risk) or according to a set of socio-economic objectives related to political ideology. This should come as no surprise, due to the fact that particular ideological underpinnings support different political parties and, consequently, are supposed to influence the programmatic agendas of governments. However, the absence of any systematic evaluation of government effectiveness against patterns of public demand for services, and the political attractiveness of the across-the-board cuts, have resulted in the reduction of some programs where there are high levels

of demand. These programs have been cut back at rates similar to or greater than programs where demand is less pressing. Public service preferences are compromised where this occurs.

Models of fiscal stress and response behaviour provided in the literature on restraint appear to approximate actual provincial financial stress management behavior fairly closely.[3] On the basis of one comparison between provincial experience and the prediction of these models, it may be concluded that most provinces will have to make significant and program-specific expenditure reductions in the future to reduce budget deficits. Of course, improvements in provincial and national economic conditions could reduce the necessity for such action. Still, it would appear that expenditure control is in order but that this strategy alone will not reduce budget deficits sufficiently. It may be expected that most provincial governments will have to consider tax and non-tax revenue increases in order to cope adequately with financial stress conditions over the next five years.

Imposition of expenditure controls and revenue increases may be anticipated whenever financial stress conditions persist at all levels of government. However, because Canadian provinces are not required to balance their operating or combined operating and capital budgets annually, it would appear that a cycle of spending cuts and tax hikes is inevitable whenever weak economic conditions reduce government revenues and increase deficits. There is no automatic rule and seldom a predictable constituency to support expenditure reduction by government. Perhaps this is the way in which provincial governments ought to operate anyway – this is a political rather than a management issue. In the absence of rules and procedures to control deficit size and budget imbalances, Canadian provinces are likely to experience greater financial instability in the future than during the past, when steady revenue growth was assured. Whether this conclusion suggests that such controls should be implemented depends on the degree of financial risk and uncertainty preferred by provincial governments and the general citizenry. Such controls probably are necessary if provincial governments are to achieve greater financial stability in the next decade. Balanced budget requirements, rules on the accumulation of surpluses and deficits, and alternative methods for providing public services ought to be considered as possible options for reducing the impact of economic fluctuations on provincial government.

This study has focused on government management strategies and procedures. As a consequence, the internal governmental aspects of financial stress management have been analysed in some detail. However, in order to evaluate the longer-term effects of government restraint actions, it will be necessary to conduct research on the economic, political, social and cultural

3 L.R. Jones, "Phases of Recognition and Management of Financial Crisis in Public Organizations," CANADIAN PUBLIC ADMINISTRATION 27, no. 1 (Spring 1984), pp. 48-65.

ramifications of changes in the distribution and use of public services. This research is necessary to determine whether, in the long run, people have suffered as a result of government expenditure reduction and revenue enhancement policies.

In particular it is important to evaluate which social and income groups within provincial populations have lost or gained ground as a result of government initiatives. A number of hypotheses related to the need for public services, the distribution of wealth and opportunity, and the social well-being of the citizenry should be addressed before any definitive conclusions are reached on the outcome of government efforts to restructure public employment, services and service expectations over the past ten years. General public attitudes critical of government's unresponsiveness, or of the nature of the response (e.g., government cutbacks or regulation), may be mitigated or countered in part through sponsorship of this research.

Conclusions

In reviewing strategic approaches to financial stress management, there are both similarities and differences among provinces. All provinces included in this analysis have implemented general expenditure reduction. The measures adopted have in most instances included reductions in government employee salary increase rates. In several provinces absolute reductions in salaries have occurred. In addition, most provinces have attempted to limit the growth of public sector employment, and several provinces have systematically reduced government employment.

Virtually all provinces studied have mandated across-the-board expenditure reductions, although the level of reduction required of government departments and agencies has varied considerably across the sample. In addition, most provinces have implemented specific program reductions and program reorganizations and mergers. However, only the provinces of British Columbia, Ontario and Quebec have terminated programs and policies to any significant degree. While examples of program elimination may be found in Alberta and Nova Scotia, the general strategy of financial stress management in these provinces, and in Manitoba and Saskatchewan, has been to smooth expenditure reduction rather than to engage in high-profile program termination. And it appears that these latter two provinces will need to examine program reduction more carefully in the near future. At the opposite extreme, of course, is British Columbia where substantial program reduction has occurred and significant shifts in reallocating expenditures between programmatic areas have been made.

Despite the fact that measures have been taken to balance provincial budgets, the latest data available to this study indicate that more significant expenditure reduction, coupled with revenue and productivity increases, will have to be implemented in most provincial governments within the 1985–86 and 1986–87 fiscal years and beyond. Unless deficit positions are

reduced, provincial credit ratings may deteriorate. While this threat is not imminent, most provincial governments recognize the need for deficit reduction.

On the expenditure side it may be expected that three general strategies of across-the-board reduction, specific program reduction, program reorganization and termination will become more common in most provinces to varying degrees. However, it is extremely unlikely that expenditure reduction alone will close the budget deficit gaps now present in most provinces. More realistically, provinical governments will find it necessary to review and implement alternatives for increasing revenues. Given this assumption, provincial tax sources and rates should be analysed as a means of identifying revenue enhancement opportunities. A general conclusion drawn from analysis of comparative tax rates indicates that the provinces of Alberta, Manitoba and Saskatchewan appear to have some additional revenue production capacity relative to other individual provinces and Canadian provincial averages.[4] On the other hand, the provinces of Nova Scotia , Ontario, Quebec and, to a lesser extent, British Columbia appear to be using public tax base capacities more extensively. Efforts to increase tax revenues in these provinces may be possible but less productive, not just because of general public resistance to tax increases, but due to the degree of tax burden already borne by individuals and corporations. Moreover, policies on the utilization of revenues from natural resource exploitation (oil, natural gas, mining, power production) for funding the general operations of government in the future must be evaluated or re-examined. Policies to use current revenues to finance future activities may have to be sacrificed in order to balance current provincial budgets and to reduce accumulated deficits. Additional revenue enhancement and expenditure efficiencies may be expected in most provincial governments through the rest of the decade.

4 L.R. Jones, *Budgetary Control in Canadian Provincial and Federal Government*. Report submitted to the Academic Relations Division, Embassy of Canada, Washington, D.C., (March 1985), chapter 4, "Provincial Government Financial Condition," pp. 38-65.

J.L. Armstrong

Retrenchment at city hall

In 1982, Edmonton was the second most rapidly growing city in North America. It had developed steadily from a population of 100,000 in 1950 to 600,000 in 1980, and doubled in area. It was the largest municipal corporation in Canada with 19,900 employees. Edmonton had become the service centre for the North.

A powerful board of commissioners managed city hall through this period of unprecedented growth. This board screened everything that went on city council's agenda and ran the city with military precision. In contrast to this powerful administration was a relatively weak city council which, with no party system, often lacked direction. The managers in the system had only one type of experience: coping with growth. In 1982, the organization changed. Reacting to the overly strong board, council wrested some control from the administration by changing the reporting relationship of the city solicitor and the city clerk from the board to council. This allowed council better access to information. Also, the mayor became chairman of the Board of Commissioners.

The economic blow fell in March of 1982, when in a two-week period, thirty-nine energy-related megaprojects were cancelled. The city quickly became aware that falling revenues would not match expenditures. In October 1983, a new mayor was elected by a landslide victory. His campaign was directed at eliminating the remnants of the commission board system, establishing an executive committee of council in its place, and ensuring that "There would be no managers managing managers at city hall."

Within a few months, twenty-four city departments were consolidated into fourteen, and the number of employees on the payroll was reduced from 19,900 to under 15,000. All four city commissioners who formed the board were removed, as were ten department heads. City council established an executive committee composed of aldermen which assumed the duties and responsibilities of the previous board.

In the fall of 1982, a Consolidation Task Force was established to lead the retrenchment process. It consisted of a working group under a director, and an advisory panel of senior department heads. The main challenge was

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educational in nature: on the horizon were problems that were drastically different from the growth-related issues encountered in the past. The task force focused its efforts on proposing a variety of retrenchment strategies. These alternatives included the elimination of overlap and duplication, the streamlining of reporting relationships and the development of a more vivid accountability structure. The task force's report, containing twenty-seven major consolidation possibilities, was ready before the 1983 election.

First down-played by the incumbent mayor, it was then approved by the new mayor and council, who surprised the task force by endorsing the entire package. The working group of the Consolidation Task Force was immediately retitled the Consolidation Implementation Team. Its challenge now was to ensure that the corporation would behave as a responsible and fair employer, while drastically reducing its staff.

It became evident that a large number of managers would have to be "outplaced," consequently the implementation team presented a proactive plan for dealing humanely with this problem. The plan, in essence, provided managers with several options: a generous cash settlement, an early retirement package, professional counselling or access to a career placement centre whose full-time job was to find them a job. A full range of services including office space, counselling and clerical assistance was also made available. This plan was presented to council and rejected. However, after the first sixteen terminations resulted in sixteen lawsuits, the mayor recalled the proposal and the plan was implemented. There were no further lawsuits.

The second primary concern of the implementation team was to maintain open communications. Rumours about the calamities of downsizing were far more devastating than the actual outcomes. The practice of open communications was therefore adopted. The most formal manifestations of this thrust were a newsletter to employees and open discussions with union leaders. The unions were up to the challenge and actually assisted greatly in working out mutually satisfactory changes to the collective agreements and in communicating economic realities to their membership. A program called "cascade" was also implemented. It began in the mayor's office and communicated information to every person in the workforce, level by level. Cascade had the full and enthusiastic commitment of the new executive committee and union leaders. Through cascade, a presentation about the city's income and expenditure systems was made by each supervisor to his subordinates. Discussion on money-saving suggestions followed the presentation. Of the 1,712 suggestions received, 521 resulted in immediate action, 450 were reviewed for possible action and all received responses. This process resulted in substantial savings, but the real pay-off was the development of a meaningful and positive information exchange. Follow-up surveys proved that the process provided employees with a sense of being informed and involved.

On the positive side, the way downsizing was dealt with demonstrated the importance of treating people humanely and of communicating openly with them. Several factors which retarded the downsizing process also became obvious. First, the corporation erred on the side of thoroughness rather than expediency. The stress caused by the eight-month retrenchment process could have been greatly relieved had it been shorter. Insecurity became the norm, consequently productivity fell off drastically as employees naturally became more concerned about their own survival than about getting the job done.

Another inhibiting factor was the lack of trust between elected officials and the bureaucracy. Politicians continued their attack on the bureaucracy long after their desired changes had been implemented. In an important sense, the politicians worked hard at fulfilling their own prophecy regarding the ineptness of management, failing to realize that they themselves, through the establishment of the executive committee, had become the management of the city.

Finally, it proved to be politically short-sighted of city council to assume all or many of the responsibilities of an appointed bureaucracy. In this awkward situation, no one was left to blame or to criticize. For example, when executive committee assumes responsibility for many aspects of collective bargaining and labour relations, who then becomes the adversary?

Retrenchment was a success from the point of view of the relations between the corporation and the employees. The problems came essentially from the conflicts dividing the organization. Many ingredients were missing from the formula required to ensure a fully successful retrenchment program. The first was the paramount need for a trust relationship between the administration and the politicians. The second was the lack of understanding of the location of that elusive line between bureaucracy and politics. It was not that the line was in the wrong place, but that there was no line at all. Finally, an essential missing ingredient was a flexible bureaucracy. Given its rigidity and linear experience, the political response was predictable and the results inevitable.

Herbert W. Kee

Incentives and rewards in the public sector

While there are no a priori reasons why monetary incentives are inappropriate in the public sector, there are many individuals who will raise strong philosophical and political objections to the use of such incentives. For this large group, a suitable sub-title might be "Incentives – what for?" In response, one would want to ask why exceptional performance should not be compensable in a direct and meaningful way, regardless of who the employee is. It is also recognized that the topic of incentives is somewhat at odds with the current conditions of restraint in the public sector.

Incentives are variable rewards (positive or negative) which are directly linked to specific outcomes in a conditional relationship. Incentives are therefore motivational since the relationship between performance and reward is clearly defined well in advance. Incentives must be distinguished from bonuses, which do not clearly specify the performance-reward relationship and are usually after-the-fact.

Incentives must furthermore be separated from base salary administration. In some cases the so-called incentive program is nothing more than an add-on to a poor base salary system. In these situations, salaries are usually quite low, and the extra cash under the guise of an incentive program has become so dependable that it is an expected and relatively reliable source of income, in much the same way as the base salary itself. If the base salary program is poorly designed or administered, then an incentive program will generally not work either.

Compensation information from the Hay data bank for the public sector (including education, hospital and public safety employees but excluding the employees of commercially oriented public corporations) in Canada and the United States is quite extensive and can be briefly summarized as follows:

- At lower levels of job content, there are, with some exceptions, only small or negligible differences between average base salary rates in the public sector and in the private sector.
- As job content increases, however, the differences between the public

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sector average and the private sector average become greater, to the extent that at the most senior levels, there is approximately a 60 per cent discrepancy.

- There are no public sector organizations that we know of in either Canada or the United States that have *true* incentive programs.

In light of this information, it is natural to ask if incentives would indeed be appropriate for public sector organizations, and if so, whether they would be pragmatic. To answer these questions, we must consider if levels of performance in the public sector warrant additional monetary rewards such as incentives.

If it can be shown that the level of performance in the public sector is demonstrably and significantly lower than in the private sector, then there is a reasonably good case against incentives in the public sector. Performance is a function of both motivation and competence, thus, one of the crucial questions is whether managers in the public sector are any less motivated or competent than managers in the private sector.

We are all familiar with the jokes and anecdotes about inefficiency on the part of civil servants. Some of us will have had first-hand experience of it. Are these isolated incidents, or are they indicative of what most public service employees are like? My experience suggests that public sector employees exhibit the entire spectrum of possible behaviour patterns from unmitigated incompetence that would destroy any argument for incentives, to a professionalism and capability that would exceed even private sector standards. And speaking of the private sector, it has its fair share of incompetence as well. In fact, there are many instances in the private sector where positive results (leading to incentive payments) are mistakenly interpreted as indicating competence: for example, high profit levels which occur not because of managerial competence but because of lower interest or exchange rates, or high commodity prices. Also, increased output may be attributed to managerial competence when in fact it is a result of increased capital investment. The assertion that managers in the public sector are not as competent as managers in the private sector would only be valid if it was based on different frequency distributions for levels of competence and motivation within the two populations.

Any incentive program must be based on performance outcomes which are measurable and quantifiable. Unfortunately, in the public sector, a great deal of confusion exists about the assessment and measurement of performance. For example, it is often said that while a private sector company can go broke, a public sector organization cannot, and that therefore performance cannot be measured in the public sector. This is an argument about the measurability of organizational performance and it is questionable whether it can be applied at the level of individual performance. I

would submit that performance in a position such as an accounting manager is equally measurable (or unmeasurable) regardless of whether it is in the public or the private sector.

Some of you may be familiar with PPBS, OPMS[1] and the work on compensation and performance by the Advisory Group headed by Allen Lambert.[2] These admirable efforts to address the measurement of performance in the federal government warrant considerable discussion in their own right. The question is, do any of these initiatives provide a measurement basis on which an incentive plan can be designed? Within the rough taxonomy proposed, the answer is yes and no – yes in the sense that the most senior positions, (i.e., deputy ministers and perhaps ADMS's), can be measured by macro-measures such as those reviewed in OPMS; and no in the sense that junior supervisory staff positions are difficult to measure, even in the private sector.

One of the conclusions we may well come to is that, in the public sector, we will have to rely more on judgment than on so-called objective measures. When it comes to performance measurement, especially where an incentive system is based on it, the word judgment evokes reactions of fear, hostility and mistrust on the part of managers in both the public and the private sectors alike. Why?

Before attempting to answer that question, let me point out that in many private sector incentive plans, judgment becomes a factor at one point or another because of the discomfort, strange as it may seem, with the cut-and-dried, automatic nature of objective measures. But to return to the question as to why judgment is an anathema in performance measurement, the apparent answer is fairly easy: the possibility of bias. And when it comes to putting money on the line, on the basis of judgment, suspicions tend to become magnified. How many people in government subscribe to the doctrine of the infallibility of ministerial or deputy-ministerial judgment? One obvious solution is to institute checks and balances or other mechanisms to reduce the effects of bias. This is in fact done with reasonable success in the case of job evaluation. A systematic, clearly defined approach in which several judges make several judgments using the same criteria can go a long way toward reducing bias.

Another approach is to measure actual accomplishments against planned objectives, as in MBO. However, there have been major problems with MBO: the ability/inability to set targets, or targets that are set either too high or too low. As is the case with bias, if adequate checks and balances are instituted in the process of setting objectives, some of these problems can be

1 Treasury Board of Canada, *Operational Performance Measurement* (Ottawa: Department of Supply and Services, 1977).

2 A.T. Lambert, *Fifth Report of the Advisory Group on Executive Compensation in the Public Service* (Ottawa: Department of Supply and Services, 1977).

overcome. The question is whether they can be overcome enough so that they can form the basis for an incentive program. The answer is clearly yes; in fact, this is done frequently in the private sector under similar circumstances. New technologies are being developed to provide an alternative to both objectives and raw judgment.[3]

A number of observations should be made by way of conclusion. First, incentives may be easier to apply at the most senior levels of mangement in the public sector than at lower levels, since measures relating to macro-level performance (for which senior managers can be held accountable) are more readily available than measures of micro-level performance. Secondly, one would not expect incentives to be paid as frequently in the public sector as in the private sector. Thirdly, it would be much easier to make lump sum incentive payments (which are contingent on performance from year to year) than to attempt to reward performance entirely by means of base salary. Furthermore, since incentives can usually be cost-justified, they can be made in meaningful amounts. Finally, since there will be significant reliance on judgment, it will be essential to develop better performance standards, better performance management processes, and better training in performance management. Furthermore, because of the importance of appropriate checks and balances, public sector managers will have to devote more time and effort to the management of performance.

However, having said all this, the prospects for the use of incentives in the public sector are not good. In many public sector organizations there are cultural barriers which militate against performance measurement and therefore against the use of incentives. Even in those public sector organizations that are performance-oriented, the top levels of management may be unwilling to devote the time, effort and resources required to ensure effective performance management. Moreover, at the political level, the entire question of incentives for public sector managers remains suspect for the philosophical reasons mentioned earlier. Thus, while monetary incentives in the public sector are feasible, they do not appear to be probable.

3 J. Peter Graves, "Let's put appraisal back in performance appraisal: Parts 1 & 2," *Personnel Journal* (November-December 1982), pp. 844-49 and pp. 918-23.

John Johnston

Public servants and private contractors: managing the mixed service delivery system

The observations that follow are about the challenges which face public sector managers forced to work in two different environments: the administrative and the entrepreneurial. Over the past three years we have witnessed a significant shift in the strategy of program delivery from the situation where everything done by governments and public organizations was done in-house to a variety of arrangements in which a significant proportion of programs are delivered in whole or in part by outside resources. There are a number of different permutations, but the main ones are: contracting for services; contracting for management; joint ventures; and even, in some cases, the outright sale and privatization of operations. This has resulted in a fundamental change in how we do business in the public sector. Nor is it likely that this is merely a passing phase. For the foreseeable future the public sector manager is going to be working in an environment characterized by uncertainty, restraint, competition for scarce resources and all the other features which traditionally have belonged to life in the private sector.

Those of us running public institutions must remember that far from administering secure programs within static organizations, we are now going to be managing the process of adapting to change, endless change, and in an environment where change cannot simply be accommodated through expansion and incrementalism. The philosophy of "less is better" is rapidly replacing the attitude of "more is better" when it comes to government. However, privatization of service delivery in its various forms is likely to continue not only because it seems to be a route to cost containment, but more positively because it increasingly holds the key to achieving corporate objectives.

Thus privatization in its broadest sense (covering the mix of arrangements already alluded to) represents a quick means of tapping into skills that are otherwise unavailable, and increasing flexibility in program delivery, so that services can be expanded or contracted in response to changes in demand. Mixed service delivery arrangements are a way to spread risk, and in many empirical studies have been shown to lead to increased revenue and

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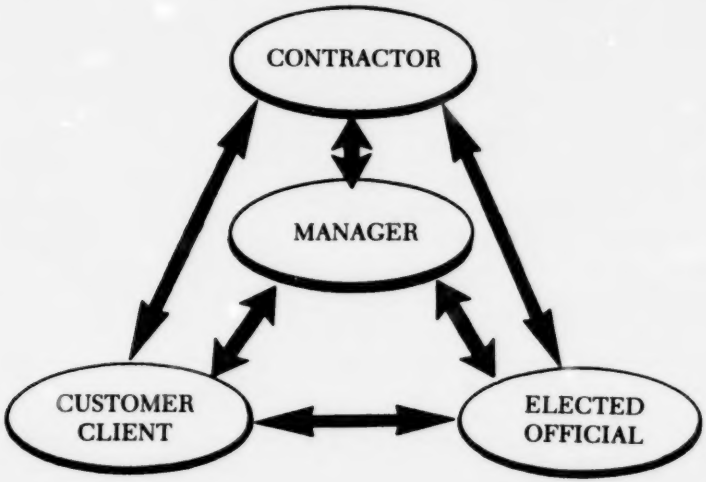
improved financial performance. What then are the management implications of this shift to using outside resources in program delivery?

The use of outside resources introduces a new element into the management framework of the public servant. Prior to the widespread use of privatization, a diagrammatic representation of the manager's relationships would have included the manager, the customer or client, and the elected official. In this model, the manager faces demands or expectations from two quarters – the client and the elected official. Customers likewise have two channels for articulating their demands and communicating their response. Within this framework, the essential ethos is an administrative one and the challenges and risks relate to program administration.

As the emphasis shifts to using outside resources the role and relationships of our public service manager change. We now have four participants: the manager, the customer, the elected official and the contractor. The number of relationships has doubled and the complexity has increased exponentially.



Within this model, our program manager is faced with entrepreneurial challenge and risk. This is because the environment is now characterized by a significant loss of direct control by the manager and elected official over the actual operations of program delivery. The increase in the number of communication linkages brings an attendant increase in the complexity of demand articulation and accountability. The manager requires private sector type skills in making deals and has to be able to balance commercial values with concerns over social impact and social responsibility.

This model, oversimplified though it is, provides a useful starting point for discussing some of the broader issues that arise from the new roles and relationships which are thrust upon the public sector manager.

The first obstacle we run into in managing mixed resources is the panoply of government rules, regulations, policies, procedures and directives. Alex de Tocqueville very neatly captured the universal nature of this phenomenon: "Every central government worships uniformity. Uniformity relieves it from inquiry into an infinity of details, which must be attended to if rules have to be adapted to different men instead of indiscriminately subjecting all men to the same rule." We all recognize the persistence of this characteristic within our institutions, but it poses a fundamental dilemma, for while we are encouraged to use outside resources, we are simultaneously deluged by directives to curb expenses that preclude us from managing mixed resources effectively. For example, the rules governing purchasing (and particularly the requirement to go with the lowest tender) are major impediments in managing the mixed resource delivery system. When selecting a supplier for program delivery the competent manager is surely obliged to consider many other features besides price. If we are to adapt successfully to the "new reality" of partially privatized service delivery, we should strive to implement management practices that are flexible and responsive.

To move from the administrative mode of management to the entrepreneurial mode of management demands that each of us adopt the "Hey You Theory of Management." That is, every manager must be given latitude for initiative by saying to his or her boss: "This is what I intend to do unless you stop me." There is, of course, additional risk in this approach, but in my experience my superiors nine times out of ten have agreed that I should proceed as proposed. I have also found that the managers who report to me, when given the freedom, will set challenging targets and propose initiatives beyond my normal expectations and those of the organization. Top management, of course, has to support this approach and be prepared to accept the risks and the failures inherent in being more proactive.

I also believe that to successfully manage mixed resources you cannot be burdened with the preoccupation of how to administer rules and regulations. Rather the manager has to be goal-oriented and motivated by a desire to "cut a deal" that focuses on the desired ends, and not on hidebound compliance with the established rules. There are obvious steps we can take to

facilitate this. We can decentralize and delegate decision-making to where the action is, and where the innovative solutions are most likely to be discovered. We can increase the scope and magnitude of decision-making authority at all levels by insisting on timely decision-making, and by recognizing the need for risk-taking, and rewarding it when successful.

I am bullish on the likely outcomes of restraint and privatization. They force each of us to focus our attention on the right things. All too often in the past we in the public sector have been distracted and caught up in debating issues that are insignificant and irrelevant, but which preclude the opportunity of getting on with the job.

This "new reality" also requires a manager who knows how to seek out and draw upon a wide range of skills and experience. We can probably thank the feminist movement for popularizing the concept of networking. It has its application in the sphere of management. I believe that to be successful in managing mixed resources you must cultivate a broad and diverse range of business associates. These contacts are a valuable source of information about the management environment, and a useful way for picking up new ideas. They can also be a resource pool to draw on when one is confronted with problems and opportunities. I make it a point to actively meet with a wide range of managers within my firm, within my industry, and also from other industries and functions. Almost without exception, business associates will contribute to and enrich the skills and knowledge we bring to the job. I think public sector managers need to be encouraged and possibly required to nurture contacts with their private sector counterparts. If you are going to contract with them, you'd better get to know them first.

Finally, I think that managers must practise a truly open-door policy. By this, I mean more than simple physical access. We have to be receptive to the values the manager promotes. The traditional lines and forms of communication are not adequate in a business environment that involves managing risk and cutting deals. It is essential that our leadership style stimulates open cooperation and communication.

As I see it, we need to overcome two types of obstacles in order to creatively manage the mixed service delivery system. The first kind are obstacles that lie within ourselves: personal insecurity, and the fear of risk, of failure and of criticism; inflexibility, conformism and the reluctance to abandon familiar or comfortable patterns and structures. The second type of obstacles exists within our institutions: the veneration of established policies and practices; restricted communication channels and rigid pyramid structures; an excessive preoccupation with attributing blame for mistakes and the excessive caution that this engenders; the lack of interest in input from insiders and the suspicion towards outside sources of input; authoritarian styles of management and the narrow-minded fixation on material incentives. These are major hurdles to be overcome, yet the challenge of management, surely, is to act as the lens which focuses all the

diffracted energies and resources of the institution on the goals to be achieved, and it is only if managers are prepared to make significant changes in themselves and within their institutions that the move to a partially privatized service delivery system is going to reap the anticipated benefits.

John L. Howard

Mixed service delivery: a private sector perspective

There are numerous examples of mixed delivery systems. I shall focus on two with which I have had some direct involvement: the federal bankruptcy system and the British Columbia forest licensing system.

The basic objectives of the bankruptcy system are to relieve the debtor of an intolerable debt burden, realize the debtor's assets, distribute the proceeds among the various claimants and, as far as possible, enable the debtor to continue a productive life or business.

By 1970 the system had run into problems. In response to previous scandals, administrators had built up a virtually fail-safe, preapproval system that imposed public sector control over every decision of a private sector trustee. In addition, the previous decade had seen a shift in values that encouraged individuals to take on increasingly large debt loads which, inevitably, led to a huge increase in the number of consumer bankruptcies. The administrative system could not handle the backlog of cases without a massive increase in resources or a fundamental system change. With little fanfare we embarked on a system change.

In retrospect the changes seem self-evident but, as with all system changes, they elicited much heated debate. The new system embodied a number of critical elements: the assignment of administrative responsibility to qualified private sector trustees; the development of standard rules that would require intervention only on an exceptional basis; the establishment of an adequate information system to provide monitoring; the reliance on reports and audits to control the quality of service delivery; and, finally, the application of rigorous licensing standards to ensure as far as possible the integrity of licensed trustees in bankruptcy. Although the system has con-

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tinued to evolve, the changes mentioned above have permitted a smaller staff to manage a much larger, fluctuating case load more effectively.

The tree farm licensing system appears to have very little in common with the bankruptcy system, but it demonstrates a like development. The objectives of the system are to optimize the use of the British Columbia forest resource in two sometimes divergent directions: to maximize the economic return to the province, and to maximize employment in the industry. In response to vocal public criticism over the danger that the licensees might exploit the forests ruthlessly for short-term gain, the Ministry of Forests established a complicated system of detailed planning, preapprovals and joint administration that was cumbersome, costly and controversial.

To resolve this problem the ministry undertook fundamental system change very similar in pattern to that outlined in the bankruptcy example, by introducing "subsidiary agreements" into the tree farm licensing system. Again this involved five steps: assigning administrative responsibility to the licensees and their staff of professional foresters; developing standard rules so that intervention would be required only on an exceptions basis; setting up an adequate information system to maintain oversight; relying on reports and audits to control the quality of service delivery; and imposing stiff penalties for non-compliance.

Thus even very disparate public sector programs can be improved by mixed delivery systems. In summary let me suggest the symptoms of when bureaucracy has become excessive, along with the remedies and the positive benefits which can result.

The symptoms are as follows: first, an excessive tendency to centralize decision-making; secondly, too many layers of staff connected with policy, technical and legal advice which effectively constrain a manager's decision-making discretion; thirdly, a proliferation of decision levels in the heirarchy that tends to diffuse responsibility, slow up decisions and lead to perceptions of unresponsiveness; and lastly, a hardening of the bureaucratic arteries evidenced by thicker manuals, more committee meetings and the paralysis created by countless advisory groups.

The remedy whenever possible is to assign program delivery to competing private sector actors, while maintaining control over policy and over quality of service. This means putting in place an information system to provide reports and audits that can be followed up where necessary by effective administrative sanctions or monetary penalties. The resulting system will exhibit a number of characteristics. The excessive layering of management will be reduced. Flexibility should increase the capacity to adjust to a changing environment in different regions and localities. Bureaucratic drag and second guessing should decrease. There will be more competition among private sector actors, leading to the generation of new ideas and approaches. Of course, the increased exposure raises the risk to management of being criticized, but this also increases the motivation to exploit new opportunities.

In conclusion, mixed delivery systems are not only more effective, they are also more challenging, more interesting and more fun to manage. But a manager of such a system should always keep in mind the aphorism of Piet Hein that the process is "to err and err and err again but less and less and less."

Ted Grusec

Office automation trials in the federal government: lessons for managers

Office automation (OA) is a fuzzy term. Many have legitimately complained about the misleading implication of "automation" in the office context; however, the term is now entrenched with its new, but generally understood, generic meaning rather than the literal one. It usually refers to any system which uses individual work stations to access several functions from a list that includes: text creation, manipulation, storage and retrieval; messaging or electronic mail; decision support (e.g., spreadsheets); database management; personal support (e.g., calendar, personal files, etc.).

Since 1983, I have been associated with a number of different OA activities in the Canadian federal government. My mission has been to achieve an understanding of the human, social and organizational implications of the introduction of this class of technologies into the office. My primary involvement was with the Office Communication Systems (OCS) Program of the Department of Communications. The program's main aim was to stimulate Canadian industrial OA capability by funding the development of systems and by providing test sites in federal government departments for trying out these systems. Within the program, I was in charge of assessing the impacts of OA as seen in the field trials sponsored by the program.

Unfortunately, there were limits to the impacts that could be observed because end users' experience with the systems in the trials was too short to enable stable impacts to develop. Where two years may be a lower limit for such stability, one year was the longest that any trial provided. Within the fixed duration of the program, technology development, always unpredictable, took up more of the available time than could have been anticipated, leaving less for the on-site usage tests than was desirable.

Still, much was learned about impacts in the OCS trials. After those trials were under way, OA projects began to proliferate throughout government. My membership on steering, advisory and other committees associated with some of these projects was the vehicle for gathering further information about OA implications. To complement the OCS information, some vital data about longer term impacts came from pilot trials that have lasted for more

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than two years, where I have been on committees overseeing those trials from their beginning.

What follows are a few key points, observations and speculations about OA that have emerged from these various government endeavours.

Meeting needs

There are situations where an organization knows exactly what it is after and embarks on a rational, well thought out plan of change which includes an OA component. At the present, such situations are very rare, although high rationality may be sincerely but mistakenly proclaimed or else may be expounded to influence funding bodies. In most cases, there is a large exploratory element when pursuing OA and this is entirely appropriate to the present state of knowledge of organizational change and OA. In the majority of cases, then, a pilot trial, using proven technologies, is highly recommended. It is the least costly and most informative way to determine the real "needs" of organizations and of individuals within them. Needs cannot be known sufficiently well without a fairly long, say two year, hands-on period with a representative target segment of the organization.

Needs will evolve and change, sometimes in surprising ways when technologies are used. Discovering these transformed needs is one of the purposes of a pilot trial. Naturally, decisions preceding any technology installation, including a pilot, should be as informed as possible. But, as far as needs are concerned, these decisions will be "best guesses." Much better best guesses can be made after the pilot is over.

If funders don't like the idea of a pilot trial, it should be called something else. Regardless of what it is called, a formal pilot usually differs from a full-scale installation only in size. And so, in a first installation, the choice is really between a relatively inexpensive learning process with a small pilot trial on the one hand, or a potential financial disaster with a larger scale system on the other hand, for there is really no way to know how well suited a particular system is to a given office without sufficient hands-on experience.

Training and learning

Training needs and time can be very poorly conceived by decision-makers who have not had relevant experience. Much grief can be avoided by calling in professional trainers. They should be brought in very early in the process, preferably as part of the initial stages in OA planning. Of course, once a vendor has a truly stable, thoroughly tested product as well as much experience in implementation, that vendor may be able to provide a complete package which includes training and trainers. This has been true with older technologies and may eventually be true with OA. It is not true now.

"Training" should not be confused with "learning." After training, people know what events to expect by performing a sequence of actions. Learning is how to incorporate these events into jobs and into fulfilling organiza-

tional purposes. The suggested two years of a pilot project are mostly about learning.

A pattern does seem to be emerging gradually as general cultural experience with computers and with OA grows. Training can proceed very much faster for experienced persons and organizations when new systems or modifications are introduced. People with prior exposure want to get into the learning and want or need less training. Once the organization has learned, the learning remains in place as people leave and newcomers arrive as long as there is some substantial continuity in personnel. Once the system has been in place for some time, much of the training and learning for newcomers is transmitted as part of the organizational culture. This has always been the natural process and should be encouraged.

Environment and ergonomics

Environmental and ergonomic issues are extremely important. Again, experts are recommended and they should be brought in very early as part of OA planning. OA systems take up space, may need special furniture, generate heat, modify humidity levels, can require special cabling which a given building may not easily accommodate, may totally upset heating and cooling systems of buildings, can generate unacceptable noise levels (from printers, for example), and may require new office layouts to deal with glare on monitor screens. New government policies will be needed to deal with all these matters. In the meantime, these issues cannot be ignored in any OA implementation.

Work and organizational changes

Work transformations will occur but may take some time to become fully manifest; hence the suggested two years for a pilot trial. Technology enthusiasts within an office may lead the way in work transformation, as may good trainers. At first, OA is typically used to simply mimic pre-OA patterns of work and old ways of doing things. Eventually, new patterns will almost inevitably arise. Not surprisingly, those who are already well-motivated in their jobs are likely to be the earliest to take advantage of new possibilities.

Among the kinds of changes that have been observed within the federal government are the proceduralization or routinization of repeated events that were previously treated as though each of the instances were unique. An example of this is an increase in the amount of boiler-plating used in letters of reply to routine inquiries from the public. This actually can result in much higher quality letters than a fully "customized" approach produces. The boiler-plated portions are usually well-polished to begin with. Adding still further polish in a final stage undertaken to ensure that unique elements in an inquiry are properly addressed can only further enhance the quality of the final product. It should be stressed that the questions from the public in

this example *are* relatively routine, and neither call for nor warrant the kind of effort required in inquiries that are truly unique.

This is quite analogous to the kind of changes in manufacturing where, say, a gun part or a bicycle frame was once assembled by hand and needed the application of a considerable amount of craftsmanship. While romantics may decry a loss, in fact, eventually, much better gun parts and bicycle frames are made by machine than could possibly have been done by hand. Unlike in the factory, however, office job losses have not been seen. What has been seen is the freeing of time for pursuing the highest priority goals. This is quite often accompanied by work upgrading for all the persons involved, as, for example, when a manager or officer now turns over more routinized but none the less important matters to support staff, such as replying to standard letters from the public, in order to devote more of his or her own time to the most urgent work. Both managers and support staff then spend more time at higher level activities than before, and both groups feel that their jobs have been enhanced. In some cases, this kind of change was possible without the OA technology but the technology was needed as a stimulant to systemization.

Changes in communicated events have also been seen. Information which previously was not shared because of the time pressures of other business can now be transmitted over new electronic message circuits. Some of these messages may appear trivial to an outsider, but their sharing may serve an important morale function for the group. Pattern changes in more obviously important communications are often seen, too, but in the case of new channels, such as electronic mail, real organizational effects may need a critical user mass before becoming apparent. Only a larger scale installation, after the pilot trial, can provide the needed mass.

All of these kinds of changes have long been reported in the literature. The only thing new here is their empirical confirmation within contemporary federal government trials. What we have not seen in the government trials is any serious signs of resistance to change, although the change process, as when inadequate training time is scheduled or when poor quality training is provided, can be frustrating.

Other sources of frustration can arise even with highly stable hardware and software. Equipment problems can emerge and can persist, perhaps for months. Eventually, users learn their way around such problems. After they do, the early frustrations, which seemed so great at the time, tend to be forgotten, or, at least, to lose significance. We have not seen any evidence of organizational structural effects. It is still too early in the gradual OA infusion process to get such effects although we will say more about the possibilities toward the end of this presentation.

All the cases observed have been in offices which exist for primarily nonroutine functions, such as those dominated by high-level professionals and

managers (non-procedural offices), although within any office, there are many routines. This is in contrast to highly routine offices (procedural offices), such as those dominated by forms processing, which have long been the domain of data processing and of stand-alone equipment such as word processors. Our overall sample is probably typical of the kind of office situations at which OA is usually aimed.

In summary, the organizational and quality of work life effects have been quite positive.

Justifying OA

Justifying hardware and software costs for procedural offices where highly routine operations are carried out, and hence where date processing principles and procedures can be applied, has always been fairly straightforward. Such offices exist to turn out specified products and these remain essentially the same regardless of technology changes. In this sense, data processing technology is substitutive, simply providing new means for old purposes. And, of course, the end products in procedural offices can usually be actually counted. The presence of both characteristics – constancy and countability – permits traditional, simple formulas to be used for assessing the comparative costs of alternative means of production. The benefits are fixed and only the costs vary. The economists' quantitative productivity concept is relevant in this kind of situation.

In non-procedural offices, where OA rather than data processing is the applicable technology, neither of the two ingredients essential for such simple cost justification is usually present. OA is designed to transform rather than to substitute, and failure to recognize this has produced distorted analyses of needs as well as inappropriate approaches to justification.[1] OA may make possible doing new things that could not be done before. The communication aspects of OA are frequently the source of such new capabilities. Also, OA can lead to new ways of doing old things. The proceduralization of repeated events is an example of this process. Further transformations are seen when both the new things and the metamorphized old things combine with the essential core of truly non-procedural work which calls for uniquely human judgment and action. The result is usually quite new configurations of responsibilities within and between jobs.

In the end, after a new stability is reached, the net effect of the various transformations is an office that operates in quite a different way than before. Since the "products" are now different, the quantitative productivity concept does not apply. Hence, presuming it could be done, a comparison looking only at the operating costs of that office, before and after OA, may be interesting but would not be, in itself, very meaningful or sufficient. It

1 T. Grusec, "Office Automation in Government Offices: 'Productivity' and Other Myths," *Optimum*, 16, no. 2 (1985) pp. 7-45.

would, in addition, be necessary to place dollar values on the total outputs of the office, before and after OA, in order to compare the benefits. This is a very tall order, but only then could a cost-benefit approach be taken.

While a value-added technique has been developed for measuring the dollar implications of OA in non-procedural work, that method is a very indirect one which identifies neither benefits nor costs but only the net effect of both on profit and loss statements.[2] Except in unusual kinds of situations, the method is not applicable in governments or in other non-profit organizations.

Assuming that the cost side could be done, we are left, then, with the need to place a dollar value on benefits in order to justify OA in dollar terms. So far, evaluating the benefit side in dollars has totally defied the best of efforts and some knowledgeable observers have simply concluded that OA cannot be cost-justified.[3] It would therefore seem more appropriate to document comprehensive descriptions of what changes to operations a given OA implementation has yielded. For each item of claimed change, one should try to "prove", in whatever seems the most convincing way (quantitative or not), that the change was actually obtained. After that, normal human business judgment, supplemented, if possible, but not dominated by arithmetic, should be used to decide whether or not the demonstrated benefits are worth the costs of OA. This sidesteps the presently unanswerable question of the dollar value of benefits, but it does focus on clear identification and demonstration of those benefits in detail. This means that each specific situation will need an individually tailored justification. The future for consultants is bright in this scenario; however, general checklists and cookbooks will, no doubt, arise.

As the number of OA installations increases, it may become self-evident that OA has undeniable benefits. When that point is reached, the cost-justification issue may simply disappear. This will be the case if and when an office will be as obviously impeded in its operation without OA as it now would be without a telephone or xerox machine.

The near (?) future

It is legitimate to question why OA is not so obviously beneficial that the justification issue has not disappeared. The most compelling reason is that the technology still has to make major gains in one vital ingredient – communications. Networking among local machines of a given system, let alone among different systems in remote locations, is not yet easily done due to a lack of hardware and software standards.[4] This means that access to information remains a major bottleneck. Distribution and storage of paper still

2 P. Strassmann, *Information Payoff* (New York: Macmillan Inc., 1985).

3 M. Hammer, "The OA mirage," *Datamation* (February 1984), pp. 36-44.

4 "Computers: When Will the Slump End?" *Business Week* (April 21, 1986), pp. 58-66.

dominates yet is colossally inefficient and cries out for the electronic solution.

The major world vendors, governments and other groups are actively working on these crucially important communications problems and this work includes a struggle to reach agreements on various standards and protocols. One hopes that the general technical solutions will be in place soon. But once the technical solutions are here and an information access infrastructure which promises to approach universality is built, new issues may arise, which have their sources in corporate culture and individual psychology.

Power and status is tied to information. A transparent information infrastructure may mean that control of information will become a major issue. Resolution of that issue could force great changes in organizational structure and power. These changes may prove to be the real impacts of OA on the information society.

Jill E. Davidson

Tech change: boon or bane for professionals, supervisors and middle managers

As we move from the industrial age to the information age much attention has been focused on how the new technologies will affect people at work. For the most part discussion has centred on what changes might be expected by people in clerical and blue-collar jobs. In this paper the results of a study undertaken by the Management and Professional Employees Society of B.C. Hydro (MAPES) will be presented. The study examined how technology has affected professionals, supervisors and middle managers in B.C. Hydro, and outlined what changes might be expected in the future. Effects were studied in terms of number of positions, job function and responsibility, and work environment. The primary sources of data were two case studies where technologies had been introduced, and a membership survey.

The first case study was the Computer Aided Drafting and Computer Assisted Mapping systems (CAD/CAM) used for engineering and operations.

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The second case study involved the Job Control System and the Distribution Construction System (JCS DCS). JCS tracks and controls the building of new gas mains and services and DCS does the same function for new electrical distribution lines. In both cases interviews were held with supervisors and middle managers, many of whom were professional engineers.

The membership survey took the form of a mail-in questionnaire on current and future effects of technology on work.

Effect on employment levels

MAPES members recognized that new technology may mean that the same number of goods and services can be produced in less time. As a result, they predicted that there will be fewer positions at most levels throughout the company due to new technology.

Since 1981 employment levels in B.C. Hydro have dropped approximately 37 per cent while sales have continued to increase. Although technology is not the main cause of this decrease, it appeared that the technological innovations introduced throughout the company have enabled operations to continue with fewer employees. Forecasts by the federal government indicate that this trend will continue. In the utilities sector in British Columbia over the period 1983 to 1992 decreases in employment levels are projected ranging from 4.3 to 7.1 per cent for engineers, supervisors and managers depending on the occupation. This is in contrast to projections of increases in employment levels for these occupations in the B.C. economy as a whole ranging from 6.8 to 15.8 per cent depending on the occupation.

In the survey for this study, job security was identified by MAPES members as a concern. Many corporations in the public and private sector have established a policy that the existing work force will not be terminated because of technological change. There are indications that this policy makes sense from both corporate and employee perspectives. In a study on the effects of micro-electronics and computers in three major Ontario cities, substantial cost reductions were reported as well as increased workloads but no outright firings.[1] Redundant jobs were eliminated by attrition or lateral transfer. Overtime work, casual employment and contracting out were reduced. In the United States a study looked at thirty corporations, including IBM and Honeywell, and concluded that by giving employees job security and reducing their fears of job loss, the employees were easier to manage and more willing to adapt to new ideas.[2] Other ways of addressing the reduction of work through technological change within the context of maintaining a stable work force include providing attractive early retirement provisions, and developing new markets.

1 R. Wilkins, *Micro-electronics and Employment in Public Administration. A Case Study in Three Ontario Municipalities* (Toronto: Research Branch, Ontario Ministry of Labour, 7 September 1982).

2 J. Gutchens, *Employment Security in Action* (Scarsdale, N.Y.: Work in America Institute, 1985).

Reducing the number of working hours is another means of ensuring that the benefits from technological change are distributed through the work force. Stuart Smith, chairman of the Science Council of Canada predicts that within the next decade Canadians will be working a shorter working year.[3] He believes that if through technology we are able to create increasing amounts of wealth, real incomes would not suffer while work was being distributed via a shorter working year. A recent Canadian public opinion poll asked who should benefit from the productivity increases.[4] Two-thirds of Canadians responded that the benefits from increased productivity should be shared among employees, employers and other groups in society such as consumers. Of these who think benefits should be shared, a majority preferred the method of reducing working hours without loss in pay. In the United States, the Bureau of Labor Statistics predicts average weekly hours for the non-farm economy as a whole will fall to 33.1 in 1995.[5]

Effect on job function and responsibility

In terms of job function and responsibility some small changes were reported. Supervisors of employees who operate computer equipment noted that their subordinates were often more familiar with the detailed operation of the systems than the supervisors themselves. This has resulted in some loss of skill superiority but also allows additional time for the supervisor to do planning and administrative work. In areas where management information systems have been introduced, first line supervisors reported some loss in flexibility in that their activities were much more open to scrutiny. At the same time these systems provide benefits because of the increase in access to information which can be used to assist in the management of their subordinates.

Effect on work environment

In the future, most members predicted that they would increasingly have to give detailed accounting for how their work hours are spent. While this accounting provides the control benefits just mentioned, some members suggested that it could be counter-productive by reducing employees' sense of responsibility.

Overall, the experience of MAPES members with technological change has been positive. Members reported that their jobs have been enriched by technological innovations in that quality of work, information available for decision-making and opportunities for creativity have all increased. Unlike studes of clerical and blue-collar workers, reductions in the variety of tasks

3 Science Council of Canada, *The Impact of Microelectronics Revolution on Work and Working*. Proceedings of a workshop sponsored by the Science Council of Canada Committee on Computers and Communications (Ottawa: Supply and Services Canada, 1980).

4 Decima Research Ltd., *Technological Change in the Workplace* (April 1985).

5 Bureau of Labor Statistics, United States Dept. of Labor, *Monthly Labour Review* (1983).

and loss of independence and initiative have not been experienced by MAPES members.

Process of implementing new technology

As part of their work responsibilities, MAPES members are often involved in planning new systems or machinery. Both CAD CAM and JCS DCS were implemented in part because people at the professional or supervisory levels were aware of the potential of applying the technology to their own work situation. The user and maintenance committees that were established for DCS are reported to have fostered good communications, and have led to system design and operation that are consistent with the users' needs.

In the implementation of a new system members suggested that additional senior management support is needed to ensure that the goals for the new system are clearly understood and that sufficient training and equipment are provided. This was evident in the implementation of JCS DCS where serious questions were raised about the purpose and advisability of implementing the system. The financial benefits were not always apparent and many suggested the systems could actually cost more than the projected savings. When the issues are not clear, it is difficult for first line supervisors to introduce the system to their employees.

Members were concerned that technological change is being planned without full appreciation of the consequences at the human employee level. There are a number of issues that could be identified in future studies evaluating benefits and costs of particular systems.[6] These include items such as:

- How many employees will be affected?
- How will job content change?
- What are effects of classification levels and reporting structures?
- What jobs will change, disappear or be added?
- How would career advancement be affected?
- What new skills and knowledge will be needed?
- What employees will need to be redeployed, relocated or retrained?
- What will be the effect on retirement?
- What impact will the new system have on organization of work?

Planning for technological change

The membership survey indicated that while no major changes were reported in the variety of tasks members performed, in the future it is expected that the variety of tasks will increase. Members are also optimistic that their skill levels will increase in their future work. During the inter-

6 Treasury Board, Government of Canada, *Changing Technologies: Human Resource Management Considerations* (Ottawa: Supply and Services Canada, 1984).

views, several members emphasized that in the past B.C. Hydro had been in the forefront of utilities and for this reason had been an exciting place to work. To maintain and develop this position of leadership further, knowledge of the latest technology is essential.

Information obtained through this study indicated a need for more comprehensive human resources planning in anticipation of technological change. Comments from members show that professional development is viewed as a joint responsibility of the company and the employee. Professionals are very willing to spend the time to upgrade their skill levels, often on their own time, but see a corporate role as well. In-house seminars, on-the-job training and outside courses paid by B.C. Hydro were the means by which MAPES members suggested that they could best be informed of new technology. It was suggested that human resources planning be given the same profile as other plans at the corporate level such as the business, strategic and system plans. A need was identified for better communication with employees about the human resource development process.

In summary, MAPES members perceive that the important issue is not whether new technology should be introduced, but how to ensure that the benefits are maximized. Members are optimistic about future changes but emphasize the need for planning.

Ulrika Wallersteiner

System ergonomics: enhancing the people-technology relationships in offices

Managers of today's offices are under a number of pressures. Some of these come from changes in the world economy and some from national circumstances.[1] These pressures include: increasing commercial competition, rising labour and other costs, a growing body of regulation and legislation, rising staff expectations and supply push from the computing industry. In order to cope with these pressures a manager will often look to the computing technologies for assistance. During the selection process the com-

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1 T. Stewart, "Ergonomics of the Office," *Ergonomics*, 28, no. 8 (1985), pp. 1165-77.

puter system is usually evaluated based on functionality (that is, what a system can do).

Recent studies have shown that the millions of dollars expended on computing systems have not observably reduced operating costs (or reduced the pressures on managers). Instead operating costs have increased due to the acquisition of computer equipment. Furthermore, as a result of poorly designed equipment and inappropriate work places, health problems have increased among computer users and productivity gains remain elusive.

The manager needs to go beyond this preliminary evaluation of functionality and consider the user capability, the task content, the equipment capability and the user environment. In other words, he must evaluate the usability of the system (that is, how the user achieves useful results). This is where system ergonomics enters, examining the interrelationships between the user, the task, the equipment, the environment and the impact the technology will have on the social and organizational structure. The user is central to the whole issue. Knowledge of system ergonomics will lead to more useful, usable and safer VDT-based computer systems that can help people become more effective in their jobs and other endeavours. This paper presents an overview of the ergonomics understanding a manager must have in order to select and integrate a computer system successfully into the office.

It is necessary to have an understanding of the users – their capabilities and limitations – in order to match the person and the technology. During the planning phase of the office system design process, the key ergonomic activities are:

- user needs analysis: focusing on the skill and requirements of potential users;
- creation of user profiles: specifying the characteristics and requirements of the range of potential users across the system; and
- allocation of function: establishing a balance between user functions and equipment functions to ensure that the user is neither overwhelmed or underwhelmed by the equipment.[2]

For a computer to be useful it must accomplish one of the following: simplify or create less hardship in work; improve performance; improve quality of work results; or allow the user to do work that could not be handled without the equipment.[3] This can be accomplished by applying ergonomics to software design. Software ergonomics stresses the matching of informational characteristics – information presentation, ways of reasoning, information flow and combining related facts – to those cognitive processing characteristics and limitations of the user. If ergonomics is not in-

2 Ibid.

3 K.W. Otten, "Information Tools: Hardware and Software Ergonomics," *Journal of Information and Image Management* (April 1984), pp. 19-26.

cluded at this stage of the system design the user will become frustrated and anxious when using the programs and ultimately the tools will not be used.

An employee's potential for increased productivity is not automatically realized with the introduction of computers. Computers can cause a whole host of social organizational problems. It is essential to manage the implementation process, and to recognize the effect the different organizational levels can have on productivity and the successful adoption of a new system if their needs and concerns are not addressed.[4] There are three prerequisites for the successful introduction of new systems: an underlying infrastructure; design of the hardware and software to meet the requirements of the people in the organization; and an implementation strategy that considers the immense social and organizational changes these systems imply.[5]

4 W. D. Galitz, *The Office Environment* (Pennsylvania: Administrative Management Society Foundation, 1984).

5 J. Bennett *et al*, eds., *Visual Display Terminals* (New Jersey: Prentice Hall, 1984), pp. 13-44.

Christopher Corbett

Expert systems: the pros and cons

The promise of expert systems and their phenomenal potential to enhance the work place should not overshadow the lessons learned during the last thirty years. These lessons can best be summarized in the principle that only when the task to be automated or computerized is fully understood and the organization and its staff have been properly prepared can the optimal benefits of technology be achieved. This paper is intended to assist the manager in the intelligent investigation of expert systems technology and its potential to provide cost-effective solutions.

An expert system (or knowledge-based system) is a computer program that emulates a human expert's knowledge and decision-making ability in a limited domain of expertise. In many cases the expert system is used as an automated peer, the results from which can be reviewed by the human expert for accuracy and then processed as his or her work. The result is that the human expert can increase productivity in certain areas.

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Expertise is often in short supply, expensive and or inaccessible. One's resident experts often move, retire or die, taking with them years of accumulated experience. In addition, one's resident expert often spends a considerable portion of time answering colleagues' questions, time that could be spent performing the tasks inherent in his or her own domain of knowledge. Through expert systems it is possible to capture an expert's knowledge in the form of a knowledge base. Once captured, the knowledge in the system can: 1) grow and expand as the expert's knowledge grows and expands; 2) be made accessible to many people simultaneously; 3) provide needed advice and consultation in small or remote areas that are unable to afford or attract expert personnel; 4) be adapted for high-level, specialized training of students and personnel; and 5) clarify a domain of knowledge. (Since expert knowledge is often implicit in nature, the development of a knowledge base often represents the first explicit representation of the domain knowledge.) However, with the applied side of expert systems work there are a variety of pitfalls that may be encountered. Many of these depend on whether you are going to take on the task of developing a system in-house or have a system developed for you. The most obvious pitfall is not understanding the limitations of this technology before embarking on a project. At present, expert systems have the capability of being exceedingly useful. Unlike human experts, the performance of expert systems drops off markedly as soon as requests are made of them at the boundaries of their narrow sphere of expertise. Consequently, they perform best in narrow domains of knowledge. In addition, these systems have a limited language for expressing facts and relationships and consequently cannot provide the same level of explanation of their reasoning that human experts can. A further limitation is that at present these systems operate most effectively when the knowledge base is modelled after a single expert. This makes the choice of a domain expert critical for the development of a useful system. An expert that is worth modelling in an expert system is often so valuable on the job that management is reluctant to give him or her the necessary leave to serve as a domain expert on an expert system project.

Given that expert systems are not panaceas for solving problems, management must be aware of the limitations of this technology and of the problems in developing these systems. The development of this technology is often associated with a long project lead time and a slow acceptance of the finished product. At present there is still a shortage of highly trained people with the skills to build these systems. These people are in high demand and consequently they are expensive to hire. They require excellent computing facilities and access to an exciting research environment. This is more than most organizations can offer, and many that have tried to set up their own expert systems groups have lost their personnel due to inability to meet such demands.

It is expensive to buy Artificial Intelligence (AI) development software, to

hire AI professionals and consultants, and to contract their services for developing systems. If management is looking to develop expert systems, it must ask the right people for advice – those with experience who will be able to provide an assessment of the suitability of various problems for the application of expert systems techniques. But it is important to realize that expert system projects are not always successful. This field is still very young and much research is left to do. The number of successful expert system applications is growing at a remarkable rate, but like all research there is no guarantee. If management takes the time to get good advice on incorporation of this technology the success of the venture can be greatly enhanced.

In selecting a potential domain for an expert system, the following criteria should be used:

1. The domain should be well understood and primarily cognitive so that all data used by the expert are available to the expert system, that is, a human can solve these problems successfully and does not require sensory input or "common sense".
2. There must be a human expert who is available to act as the "expert" or there must be a comprehensive body of literature that describes the domain in its entirety.
3. There is expertise involved in the task. In other words, the domain expert must be better than an average individual doing the task and his peer group must be in general agreement with his interpretations.
4. There should be a shortage of experts in the domain of interest in order to justify the expense of building the system. Also, the domain to be implemented should not threaten existing employees within the organization.
5. The tasks to be completed by the expert system should take a human expert between several minutes and several hours to perform.

Mitchell Sharp

Freedom of information: have we gone too far?

When I became President of the Privy Council and government house leader in 1974, Jed Baldwin, member of Parliament for Peace River, was house leader for the official opposition and he continued in that post until February 1976. Jed Baldwin has had a consuming interest in freedom of information. As house leader of his party, he had an ideal platform from which to expound his views. As his counterpart in the House of Commons, I was the target of many of his attacks and it became my responsibility to respond on behalf of the government.

I frankly admit that freedom of information was not at the time a matter of consuming interest to me. As a member of Parliament and minister, I had not received letters or other representations from ordinary citizens on the subject – not a single one. All the pressure for legislation came from professional and organized groups such as the Canadian Bar Association and Access and, of course, from Jed Baldwin. In other words, the public was not clamouring to obtain access to government documents.

Nor was I surprised by public apathy. In an earlier incarnation, I had been a senior civil servant for sixteen years and as a minister I had held the portfolios of Trade and Commerce, Finance, and External Affairs. I was aware of the nature of government documents and I doubted very much that access to the documents that would become available under legislation similar to that which existed in other countries would uncover much, if any, information that had not already been revealed in one way or another. Under the kind of parliamentary government that exists in Canada, with its wide-open oral question period in the House of Commons, the rights of MPs to submit written questions and to apply for the production of papers, it is extremely difficult for a government to hide essential facts.

My personal attitude toward freedom of information was therefore quite relaxed. I agreed with Jed Baldwin about the virtues of open government. I was not opposed to legislation giving access to information. I voted in favour of a resolution favouring the introduction of such legislation. My experience both as a civil servant and as a cabinet minister, however, led me to argue

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vigorously against revealing current cabinet documents, or the advice given by civil servants to their ministers, or documents that could compromise relations between Canada and foreign countries or between the governments of Canada and foreign countries or between the governments of Canada and the provinces, or that invaded privacy.

On January 20, 1958, Prime Minister Diefenbaker revealed what he called the "hidden report" on the economic outlook signed by me as associate deputy minister of Trade and Commerce, which had been given to the ministers of the previous Liberal government in advance of the 1957 budget. The revelation of this secret document was one of the reasons why I decided to leave the public service a few months later. If documents like this were to become accessible, one of two things would happen. Either the civil servants would ask the ministers what they wanted by way of advice so as to avoid a public conflict, or the advice would be given orally.

Those who understand our parliamentary system and who have an interest in good government would not quarrel with the need for exceptions to access, such as those I have mentioned. The debate centres around the question of which documents are not accessible and who decides that they are not accessible. During the time that I was spokesman for the government on the subject of freedom of information, every encounter with Jed Baldwin and others who advocated legislation finally came down to these points. In particular, as I put it in the House on February 12, 1976: "How can members be sure that documents, access to which is denied, really fall within the exempt category?" In essence, my position was that the government had to take the final responsibility, since the government has to deal with the consequences of revealing the information. I favoured the appointment of an official to whom an appeal could be made when access to documents was denied and this official would have the right to publish his or her opinion as to whether the denial was justified, in this way exposing to pressure a government that unjustifiably withheld information. I did not believe, however, that the government should be compelled, even by a court, to reveal documents that, for good reason, it considered should remain confidential. What I had in mind particularly, of course, were cabinet documents or documents that might jeopardize Canada's relations with foreign countries or with the provinces or that would invade privacy or reveal information given confidentially to the government.

The principle that the public had a right of access to government documents had been accepted while I was president of the Privy Council. When I appeared before the Standing Committee on Regulations and other Statutory Instruments on February 18, 1975, to consider guidelines for the production of papers and the subject matter of Bill C-225 (Jed Baldwin's private bill on freedom of information), I commented in passing that:

When I entered government the attitude was . . . negative. It was that government

documents are confidential and not to be released unless there is good reason for releasing them. The emphasis is switched now; at least, documents are to be released unless they are in contravention of the principles that are laid down here.

The Access to Information Act which was approved in 1982 and came into effect on July 1, 1983, put this principle into legislative form by creating the right of every citizen and permanent resident of Canada to be given access to any record under the control of a government institution, subject to exemptions.

What interested me particularly was the way in which the government and Parliament dealt with the issues that had been at the centre of the debate from the time that legislation was contemplated: namely, the scope of the exceptions to access and the mechanism for assuring that documents, access to which is denied, really fall within the exempt category.

In a last-minute amendment, the legislation dealt very neatly with cabinet documents by declaring that the act "does not apply to confidences of the Queen's Privy Council for Canada," which are defined very broadly. In other words, there is no procedure for applying for access to cabinet documents unless they are more than twenty years old or they consist of neutral background papers. Current cabinet documents are not exempted. The act simply does not apply to them. There is no appeal to the Information Commissioner or to the Federal Court.

The exemptions in the act to access are more or less the familiar ones and I shall not take the time to list them. Not surprisingly, they were criticized by the opposition in Parliament and by some lawyers and other advocates of freedom of information as being unnecessarily broad in scope. The exemptions are put into effect, not by declaring that the relevant documents are not obtainable, but by directing the heads of government institutions (which for departmental heads means the minister) to refuse to disclose them or giving them the right to refuse to disclose them. The act therefore lays the responsibility for protecting the documents on the ministers or the heads of agencies who have custody of them. The act is silent as to what happens if the minister or the official discloses information which he is directed to refuse to disclose. If, however, the applicant for a document is denied access, he can appeal to the Information Commissioner who, after investigation, issues a report either supporting the applicant or supporting the government. The commissioner does not have the authority to compel disclosure. Either the applicant or the Information Commissioner or the two together may, however, appeal to the Federal Court for a review of the refusal. The court may order the head of the institution to disclose the record.

As I have already said, I was not in favour of giving authority to anybody outside of Parliament, even a court, to order the government to disclose information. What I had in mind, of course, were documents the revelation of

which could have done serious harm to the conduct of government or to international relations or federal-provincial relations or would have disclosed information provided in confidence to the government. By excluding cabinet confidences from the act and by limiting the authority of the Federal Court to order disclosure of records relating to federal-provincial affairs, international affairs and national defence, and law enforcement and penal security, my concerns on that score are largely met in the legislation.

The Access to Information Act and accompanying Privacy Act have been in effect for more than two years, long enough to make some preliminary assessments of how they have operated. One thing is evident. There has not been a flood of applications under the Access to Information Act. During the first year of operation, the average number of requests for documents was around five hundred per quarter. Recently, the figure has risen to around nine hundred per quarter. Altogether the total to date is in the neighbourhood of five thousand. According to the official in charge of administration, 40 per cent of the applicants got all the information they asked for. Only 10 per cent involved information exempted entirely. The remainder of the requests were in course of examination.

The first two annual reports of the Information Commissioner summarize the complaints that have been made to her and their disposition. The numbers are not large; between July 1, 1983, and March 31, 1984, 136 files were opened relating to complaints and, in the following twelve months, 188. (For a period April 1, 1985, to December 31, 1985, 231 files were opened, a very substantial increase in activity compared with the same period of the previous year.) As might be expected, a very high proportion of the complaints originate in Ontario and Quebec, particularly in the National Capital Region. There are very few from the Prairie provinces and British Columbia and during the first two years of operation, none from the Maritime provinces and the Territories. In the year 1984–85, the largest number of complaints – seventeen – related to the Department of Employment and Immigration. Only five departments were the subject in that year of more than ten complaints about refusal to produce documents. The Information Commissioner supported the complainant in approximately 40 per cent of the cases. In a high proportion of those cases, a resolution of the complaints was negotiated by the release of sufficient information to satisfy the complainant.

During the same year, twelve cases under the Access to Information Act were before the Federal Court. Now there are four. On the whole, the court seems to have supported the principle of freedom of information. In all the judgments rendered so far, except a recent one relating to the CBTC, access to the disputed documents has been ordered. So far as I am aware, there have been no startling revelations of information previously concealed from public view.

Neither the relatively small number of applications and complaints, nor the lack of startling revelations surprised me. Our system of parliamentary government is by its very nature relatively open. Ministers are grilled on a daily basis when Parliament is in session. They cannot be compelled to answer questions but their credibility is on the line every day and sooner or later the essential facts affecting major government decisions become known, although not always all the details. The departments and agencies of govenment spend millions of dollars annually publishing reports of their activities.

In her two annual reports and in her special report issued recently, the Information Commissioner complained about lack of knowledge and understanding of the Access Act and its principles. "It seems," she said in her *Annual Report for 1984-85*, "that the vast majority of Canadians do not know their rights under the Act nor what they reasonably might expect to achieve should they use the Act. It is disturbing that governments . . . took no active steps to inform the public of these important rights. The *Access to Information Act* was supported by all parties but it may become an unwanted offspring left to fend for itself."

The implication is that if Canadians were better informed about their rights they would seek more information, which may be true. Her complaint certainly is consistent with my own observation, when I had ministerial responsibility for freedom of information, that the pressure for access legislation came from certain professional groups and not from the general public. In this connection, it is particularly significant that while the number of applications for documents under the Access to Information Act has been comparatively few, there has been almost fifteen times as many applications under the Privacy Act, some 73,000 up to the present date. The public may not be very curious about the operations of government. Individual Canadians, particularly federal public servants, armed forces personnel, and incarcerated individuals, do want to know what is on their personal files.

It is understandable, however paradoxical it may appear, that the enactment of legislation giving access to government documents has led to more complaints about the difficulty of obtaining information than were expressed before the legislation came into force. One obvious reason is, of course, that before the act came into force, there was no organized method of obtaining information except by written questions on the Order Paper or Motions for the Production of Papers in Parliament. The public complaints were therefore general in nature rather than specific. Now that the principle of access has been admitted, complaints relate to specific applications that are refused, take a long time to process, or involve what are regarded as excessive costs to the applicant.

I think the federal bureaucracy is adjusting to the fact that the government has committed itself to the principle of freedom of information. It is

trying to comply with the Access Act not only in form but also in spirit. I can testify from personal experience, however, that civil servants are bound to be cautious in their approach, if only because it is safer to refuse access than it is to take chances by revealing documents about which there is doubt as to their accessibility. After all, the Access Act lays a responsibility on them to refuse access, not to grant access, to certain classes of documents. Moreover, the press and the lawyers are likely to be more curious about documents that are not readily accessible than about those on which there are no restrictions as to access.

Nor should it be overlooked that until now government has been organized primarily for internal operational purposes, not in anticipation of responding to requests from the general public for documents. Indeed, when I was a civil servant, the question of confidentiality was itself an internal matter: that is, which ministers and which civil servants were to have access? Was the security marking to be Top Secret, Secret, Confidential, or Restricted? We did not give a moment's thought to the question of accessibility to the public, one way or the other. It never occurred to us to prepare memoranda that might some day be published or in such a way that part of them could be published without revealing confidences.

Some changes in operation which can be attributed to the new Access and Privacy Acts are already evident. In compliance with the two acts, each government department has organized an access register describing the files of the department, and an index of personal information. The official concerned with the administration of the acts comments that, "Not only are these publications beginning to approach what was contemplated in the legislation but are also becoming fine information management tools."

I am informed that the standards of preparation of internal documents are improving. There is nothing like the prospect of publication to improve objectivity, analysis, and drafting. The hope was that the existence of the legislation would lead the departments to make more facts available on a regular basis as a matter of course. Perhaps this is happening though it is difficult to find supporting evidence. What should be borne in mind is that most departments already publish vast quantities of information unasked: a veritable flood of government documents crosses my secretary's desk every day. I was curious as to whether requests for information that had hitherto been answered by the departments directly were now being channelled through the Access Act. I was assured that the departments are under instruction to carry on as they had been doing and not to charge a fee in such cases.

Published material indicates that the fees collected under the Access Act fall far short of covering the costs of supplying the document being applied for. In relation to overall government expenditures, of course, the figures are trivial. However, I know from just one inquiry to the Northern Pipeline Agency (which incidentally was not pursued) that responding to a request

for documents can involve a very considerable disruption of routine operations, the cost of which is by no means insignificant and is not included in any published figures. Conversations with other officials indicate that, when access to documents involves judgments as to accessibility, the time of very senior and highly paid officials is inevitably involved and is also not included as a cost of producing the documents.

Some general observations before I conclude. The Access to Information Act has been used particularly by:

- Canadians who have a grievance against some ruling by a government agency and wish to get access to the facts surrounding that ruling;
- lawyers who seek information on government files useful to the promotion of their clients' interests and by business groups with special interests;
- academics and others particularly those interested in Canadian history. Cabinet documents more than twenty years old now become available on application, whereas until the access legislation was approved, academics had to wait for cabinet papers to be open for inspection after thirty years;
- organized groups who seek information that supports the cause in which they are interested; and
- MPs who are apparently using the Access Act rather than the parliamentary route to obtain documents.

The act has not been particularly useful to journalists writing about current affairs because of the time taken to produce the documents, even when access is granted. It has been more useful to investigative journalists – for example, the disclosure of the documents relating to CIA operations during wartime when Canadians underwent a form of brainwashing. Of the total number of applications under the act, I am informed that between 10 and 15 per cent have come from journalists.

The Access Act has begun to have an effect upon the operations of government by requiring files to be organized in such a way as to enable the public to know what is available and to facilitate the production of documents when applied for. It has, I believe, stimulated government to produce white papers and green papers containing information about proposed policies and legislation. In my view, its other principal effect has been to improve the drafting of documents because of the possibility of publication. I have not yet seen evidence to support the view, and I do not expect to see evidence in the future, that the Access Act is causing a fundamental change in the conduct of officials or ministers. Ministers and officials have jobs to do and decisions to make. The existence of the Access Act may make them more careful as to what they put on paper. I do not think that the prospect of publication of the relevant documents affects what they do or how they do it. In any event, in most circumstances, the facts are made known or become know in the ordinary course of events.

There were exaggerated expectations of the benefits of access legislation. On the whole, however, I think that, with all its limitations, the Access Act

serves a useful purpose if only because it gives the right to apply for information on government files. That right may not be used extensively because Canadians are not as accustomed to questioning authority as some would wish them to be, and our system of parliamentary government is reasonably open. But the right is there and is a safeguard against abuse of authority.

I do not think it would be wise to amend the act by opening access to confidences of the cabinet or the advice given by civil servants to ministers or documents that would compromise relations between Canada and foreign countries or between the governments of Canada and the provinces or that break understandings about confidentiality or invade privacy. The Information Commissioner has been vigilant in drawing attention to instances where government departments or agencies have given too wide interpretation to these exceptions and on the basis of its early judgments the Federal Court seems to be on the side of freedom on information. I say this notwithstanding the disappointment expressed by the Information Commissioner about the decision of Mr. Justice Jerome in the application by the Information Commissioner for a review of the refusal by the CRTC to disclose a record relating to a decision affecting broadcasting service in Saskatoon.

Right of access to government documents is an important safeguard of democracy. But it would be unwise to push the principles to the point where its application interferes with the proper functioning of government in a parliamentary democracy, which depends upon the ability of ministers to consult privately in cabinet and with their advisers, to have access to information which can only be obtained if the confidentiality is guaranteed, and to consult privately with other governments. Nor can anyone deny that the right of the individual to privacy is at least as important a principle as the right of access to information.

Bruce Mann

The federal Information Coordinator as meat in the sandwich

It is never much fun being the meat in the sandwich. It is even worse when you don't know who is going to take the next bite. This sounds like something Arlo Guthrie might have said. He probably will, if he is ever commissioned to write a song about the modern-day Canadian folk-hero, the federal Access to Information and Privacy Coordinator. I am speaking about the federal public servant (not to be confused with the Information *Commissioner*) who is responsible for the implementation of the Access to Information Act in his or her department.

A quick walking tour of the act

Canada's Access to Information Act, which came into force on July 1, 1983, gives Canadian citizens the right of access to records under the control of the federal government, subject to certain exceptions and exclusions. The government must respond quickly to access requests – thirty days to answer a request either by providing the requested records, refusing (with reasons) to provide them or indicating in writing how much longer it will take, and sticking to that assessment.

The Information Coordinator must locate the requested records and review them to determine whether those records, or portions of them, are subject to exemptions from disclosure under the Access to Information Act. In some instances the refusal to disclose is mandatory: records received in confidence from provincial or foreign governments must not be disclosed. Personal information must not be disclosed, but there are at least a dozen exceptions to this rule. In other instances disclosure is discretionary: military and international affairs documents may be withheld providing some injury to the conduct of international affairs or national defence is reasonably likely to occur from disclosure. The injury test does not always apply, however. Accounts of consultations or deliberations involving federal government employees may be withheld from disclosure purely at the discretion of the relevant minister. In the case of "third party information" (typically commercial or technical information about private sector entities) the government *must* refuse disclosure where it could reasonably be expected to have

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an adverse effect on the financial or competitive position of the third party. There are a number of other grounds for exemption under the act, each of which is either discretionary or mandatory in nature, and involves either an injury test or a class definition to determine its scope of application. Where the government is about to disclose a record, but thinks that disclosure *might* have an adverse material effect on a third party, it is required to notify the third party, hear its representations on the matter, and reach a decision on disclosure, all within thirty days.

When the procedure is over, and the requested records have been disclosed or refused (with reasons), the requestor has one year from the date the access request was initially made to lodge a complaint with the Information Commissioner. This complaint may deal with the grounds for exemption of the record in whole or in part (this is the most frequent type of complaint) or may concern such things as unreasonable extensions of time, fees that are too high, official language used and even the manuals and publications which the government is required under the Access to Information Act to make available to the general public. The Information Commissioner is required to conduct an investigation into the complaint, and this may include hearing representations from third parties as well as the complainant and the government officials. The commissioner has all the powers of a superior court judge to subpoena witnesses, compel testimony and examine records, but cannot order disclosure. Recommendations are made to the relevant minister and, if necessary, directly to Parliament.

There is provision in the Access to Information Act for limited judicial review of complaints of non-disclosure. A Federal Court judge may order that a record be disclosed or, where a third party has intervened, may order that records affecting the third party not be disclosed.

Unique role of the Information Coordinator

The Information Coordinator's position is unlike any other in the federal government. In small departments or agencies the role of the coordinator may only be part-time. For example, the Yukon Territory Water Board has not yet received an access to information request, so the duties of the person who is the coordinator are, to say the least, minimal. In some departments, the coordinator does all of the access to information work, and in larger departments the job of Information Coordinator is more managerial in nature. For example, at the National Parole Board, the coordinator oversees the access to information unit and is also the Director of Headquarters Operations.

The uniqueness of the role of the coordinator, however, lies in the multiple working relationships and directions of responsibility. In the pyramidal hierarchy of the government, the Information Coordinator

could be represented by an asterisk with arms reaching up, down and in several directions sideways. And, like the meat in the sandwich, the coordinator does not know where the next bite is going to come from.

Relationship with requestor

The information requestor typically sees the coordinator as the person holding the rubber stamp saying no. Contact with the general public is direct – by letter, telephone and often face-to-face meetings. The public's view of the Access to Information Acts stems almost entirely from dealings with the coordinator. Newspaper reporters like to poke sharp sticks at the coordinator.

Relationship with departmental colleagues

Unlike the finance section and the personnel section of a government department, the Information Coordinator is perceived to have nothing positive to offer his or her colleagues, and always seems to be a thorn in the side. When an access request concerns their area of responsibility other section heads complain that their time is being taken up in consultations about exemptions from disclosure, and then complain if disclosure has led to unfavourable media coverage.

Relationship with third parties

When the Information Coordinator gives notice to a third party that the department intends to disclose a record which may affect the third party, the coordinator must suffer the complaints that the third party will go out of business or that it will refuse to be cooperative with the government in the future if its confidential information is disclosed.

Corporate managers and lawyers have held numerous private sector seminars discussing ways to make sure the Information Coordinator does not disclose trade secrets, confidential technical information, and so forth. Sometimes they invite the coordinators, perhaps to get useful information from them, or to try to brainwash them. Who knows?

Relationship with support staff

The Information Coordinator is the consumate slave-driver. Because of the tight deadlines under the act, staff are always under pressure to get responses out as quickly as possible. At the same time, staff must be meticulous not to let a record slip out where an exemption is warranted. The coordinator's staff are the last guardians of government information. The temptation must be terrible, when reviewing a thousand-page document, to look at a page and say "Who really cares if this is disclosed?" Yet the coordinator must shoulder the responsibility for such routine decisions and consequently must strive to keep staff motivation and attention to detail high.

Relationship with the Information Commissioner

Approximately one access request in ten leads to a complaint to the Information Commissioner about either delays or exemptions of information from disclosure. Of these complaints, about 35 per cent are found to be justified by the Information Commissioner. The coordinator is continually in the position of defending the position of other departmental officials that information should not be released against the persuasive forces of the commissioner, with the knowledge that a decision unpopular to either side will be seen as the "fault" of the coordinator. If some resolution cannot be worked out, the well-founded case is taken over the coordinator's head – way over – directly to the minister.

Immediate supervisor

Normally an individual at the job classification level of the Information Coordinator would report to a director, but because of the special nature of the coordinator's position – cutting across many program and operational entities within a department – the coordinator frequently reports at the director general or assistant deputy minister level. It may be difficult to "get the boss's ear" in these circumstances, and even if one can, the boss, being so far removed, may have only a modicum of knowledge of the rights and procedures under the Access to Information Act. This relationship demands that the Information Coordinator exercise careful judgment about decisions which he or she may safely make, or whether they ought to be taken to the top.

Changing government attitude to information disclosure

In the almost three years that the act has been in force, our office has noticed a perceptible change in the attitude of government officials and employees about information disclosure. There appears to be an emerging understanding that access to information really is a right and not just a privilege that the government is now permitted to confer. Fear of the adverse effects of disclosure has waned and there seems to be a general acceptance that the increased workload on everyone is just part of the job in the move to more open government. Finally, probably as a result of pressures brought to bear internally by the information coordinators, the time taken to respond to access requests is diminishing and the number of levels of consultation and approval for disclosure of information appears to be decreasing.

The popular media horror stories of access fees in the thousands of dollars and six-month waits will no doubt continue as long as there is any foundation for them; nevertheless, real progress is being made. The federal government is much more open than many outsiders have taken the time to find out.

Frank Cassidy

Closed or open government: the public servant and the public

"Consult with the clients, but don't tell them anything." How often have public servants heard this statement or something like it? The roles of public servants are becoming more public, but all too often the public servant finds him or herself to be the person in the middle. On the one side, there stands the public, more or less ready to provide information, but expecting that communication will not flow in just one direction, from the public to government. Publics that are consulted legitimately want to be informed about government plans and policies. If you consult with the clients, they expect you to tell them something, to give as well as take. The public wants to feel "there is a real person there" and that governments will share as well as absorb information.

According to the Westminster model, however, public servants should be anonymous. When they do come into contact with the public, they should do so only as the more or less passive agents of the elected officials they represent. It is the responsibility of public servants to elected officials which is always primary. There are no criteria associated with the model for assessing direct responsibility to the public, other than criteria which are associated with impersonality and circumspection. Public affairs are assumed to be public secrets and public secrets cannot be revealed. Thus, "consult with the clients, but don't tell them anything."

In my view, governments must take two steps to release the public sector manager from the contradictions inherent in this clash of behavioural expectations. First, governments must re-examine and revise the Westminster model of responsible administrative behaviour, placing particular emphasis on the nature and variety of direct responsibilities public servants have to the public. In many cases, anonymity is a thing of the past. The public servant now often works in public and with the public. The model for what a public servant should be needs to be altered to accommodate this development. Secrecy has a legitimate place in the work of governments. There is a need to protect the privacy of individuals and provide a space for the exploration and evaluation of policy alternatives, for example. Nevertheless, secrecy should not be the norm. It should be placed in the proper context, a context of service to the public.

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Secondly, governments must pay renewed attention to the organizational cultures which predominate in the public sector. These cultures must begin to value openness to a much greater extent. The public not only has a right to know, it has a need to know; and so do governments. Without organizational cultures which are built on a recognition of these facts of life, the efficacy and productivity of governments will continue to decline.

Governments need to be organized for the realities and expectations of the twentieth century and not the nineteenth. Secrecy is yesterday's norm. Freedom of information and open communication are today's needs. Consult with the clients and tell them what is necessary, if the job is to be done.

Jean-Pierre Kingsley

Conflict of interest: a modern antidote

The public interest in perspective

Modern government serves a number of functions. It is, as Professor Dwivedi has observed, a protector of its citizens against uncertainties of human existence, a provider of essential welfare, and an arbiter of competing sectional or other special interests.[1]

Public servants play a key role in modern government, not only delivering the programs implemented by Parliament, but also advising the government of the feasibility of new measures and the successes or failures of current programs. They enforce the laws that are passed and must do so without prejudice or favour to any one person. Public servants, regardless of levels or positions, are trustees for both elected representatives and the public at large.

It is essential that the advice public servants offer their superiors or ministers be the most objective advice possible, offered without regard to personal or private considerations. Thus, individual public servants, their superiors and their ministers must be confident that this advice has not been improperly motivated. Canadian citizens also must be confident that the public servants who provide them with services are objective in the execution of their duties. In order to carry out its roles, the government must, of necessity, rely upon the sense of justice and fair play of its employees, their professionalism, and their sense of service to their ultimate employer, the public.

Professionals are characterized traditionally as performing a service to the public, as being competent and having integrity in their work. While their expertise in areas of highly specialized knowledge or technical skills has been the basis for their duty to fulfill and discharge a public trust, the propriety of the use of that expertise is crucial to the maintenance of that public trust. The term "professional" has come to apply to more than just the traditional disciplines such as law and medicine, to the extent that it is not determined

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1 O.P. Dwivedi, *Public Service Ethics* (Brussels: International Institute of Administrative Sciences, 1978).

by the kind of work one does, but rather it embodies the attitude and behaviour with which one approaches and performs the work. In this context, all government personnel can and should conduct themselves as professionals. Implicit is the requirement to behave with integrity, demonstrate competence in work and dedicate oneself to the pursuit of excellence. Public service is different from anything else, because the ultimate employer is not a board of directors or even a privileged group of shareholders: it is the public; a neighbour; a friend; and even one's own family. Whatever the position, one is not working to make a profit for an owner, one works to serve everyone.

It would seem from this that a social contract exists between public servants and the public, just as surely as a social contract exists which permits the public to give its confidence to its elected representatives who take the actions they think are in the best interests of the public. This social contract is at the base of a representative democracy. For the public servant, this contract means the acceptance of a responsibility; it means one must carry out one's duties fairly and equally for all. A government official acts as a trustee for every Canadian, and as a trustee, it is important that this trust not be broken.

In the context of these roles and responsibilities, it is clearly unacceptable that a public servant allows a conflict of interest situation to arise. For a government officer, a conflict of interest situation is one wherein "a public employee has a private or personal interest sufficient to influence or appear to influence the objective exercise of his official duties."[2] How then, do governments and managers attempt to minimize the incidences of this destructive phenomenon?

Treatment at various levels of government

In Canada, public servants at all levels, municipal, provincial, territorial and federal, are subject to a conflict of interest regime of one form or another. I would not suggest that each regime is a step in an evolutionary continuum, but I would like to mention some of the distinctions of each, starting with the municipal level.

The municipal level

Michael Starr and Mitchell Sharp observed in their Task Force Report, *Ethical Conduct in the Public Sector*, in May 1984 that it is at the municipal level in Canada where by far the largest body of law and jurisprudence applies with respect to conflict of interest matters. For many years, provisions have been contained in the Municipal Acts or similar statutes in each pro-

2 Kenneth Kernaghan, *Ethical Conduct: Guidelines for Government Employees* (Toronto: Institute of Public Administration of Canada, 1975), p. 13.

vince and in the two territories which are relevant to ethical conduct on the part of elected representatives. Recent practice has been to develop rules that are also applicable to municipal employees.

In Newfoundland, Prince Edward Island, New Brunswick and the Yukon, conflict of interest at the municipal level is covered by the Municipalities Act. Other provinces have chosen to enact separate legislation governing conflict of interest matters at the municipal level, such as an Act to Prevent Conflict of Interest in the Conduct of Municipal Government enacted in Nova Scotia in 1982, an Act Respecting Municipal Bribery and Corruption in the Province of Quebec, and the Municipal Conflict of Interest Act passed in 1983 in Manitoba. In general, provisions governing the conduct of members of municipal councils require disclosure of conflicting interests on matters before council, and prohibit members from speaking to or voting on matters in which they have financial interest.

One can assume from the way most provincial legislatures have enacted provisions to regulate this subject that concern for conflict of interest problems at the municipal level is profound. That may well be because the risk of problems arising at the municipal level is great, given the large number of highly specific matters local councils must deal with, for example, licensing, zoning, building permits and development approvals. They can give rise to a focusing of efforts by interested parties to influence members of council. In addition, councillors themselves may be involved in business activities while working as part-time councillors. These factors, among others, have presented provincial legislatures with a recognition that a fairly specified legal framework is required, and they have tended to respond by providing one to guide the conduct of elected municipal officials.

The provincial and territorial levels

For the provincial level, approaches to treatment of conflict of interest vary from one province to another, and from the approach at the federal and municipal levels. While there is less legislation dealing with conflict of interest at the provincial level than at the municipal level, there are a fair number of provinces that deal with conflict of interest through legislation.

The provisions of the Criminal Code dealing with conflict of interest, which apply in all provinces and territories as well as at the federal level, provide a base for the treatment of conflict of interest at the provincial level. As indicated, some provinces, such as New Brunswick and Newfoundland, have enacted specific legislation dealing with conflict of interest. Others, such as British Columbia and Saskatchewan, have conflict of interest provisions built into their Public Service Acts. Various provinces and the territories have developed relevant regulations or guidelines, which in some cases are in the process of evolution, while in others the employee's oath of office serves as the general framework.

The federal public service experience

I would like to turn now to the federal public service. The Canadian experience has developed differently from the United States where, since 1965, ethical conduct of government employees has been regulated by a comprehensive list of activities under the heading "Bribery, Graft and Conflict of Interest," as contained in chapter 11 of the United States Code. In 1978 the United States formalized the codification exercise through passage and signing into effect the Ethics in Government Act.

In Canada, the first attempt to codify such conduct came as the "Standard of Conduct for Public Service Employees" which was promulgated as a circular letter from the Secretary of the Treasury Board in 1973, and contained the conflict of interest guidelines which were proclaimed by order-in-council. In introducing the circular letter, the Secretary of the Treasury Board noted that:

> For many years, the Public Service of Canada has operated with very few formal published rules of conduct. There have, no doubt, always been generally accepted assumptions about what a public servant could do and what he should not do without prejudicing his usefulness as an employee of the federal government. However, the increasing complexity of modern government has blurred the line between public and private matters to such an extent that a systematic and public set of standards is now required.

Thus introduced, the conflict of interest guidelines were applied across the public service. The guidelines covered situations of actual or potential conflict of interest, but did not attempt to define them. Rather, the guidelines set forth certain principles, the violation of which would constitute conflict of interest situations. The onus was placed on individuals to conduct their activities in such a manner that the principles would be respected, the test being the scrutiny which could be brought to bear on the activities with the guidelines as the standards.

In early 1978 a set of post-employment activities guidelines were issued to complete the set of provisions. This policy applied to all new appointments to order-in-council positions, to senior executive and equivalent positions in the public service, to ministers, their exempt staff, and parliamentary secretaries, and to certain positions at more junior levels that the minister responsible identified as being of a particularly sensitive nature.

In 1983 Prime Minister Pierre Trudeau struck a task force co-chaired by Michael Starr and Mitchell Sharp, with the mandate to

> examine and report to the Prime Minister on the policies and practices that should govern the conduct of Ministers, Parliamentary Secretaries, exempt staff, full-time Governor-in-Council appointees and public servants during and after their period of public service, having particular regard to the need to ensure both public confidence in and the integrity of the governmental process and the need to attract to government individuals of high calibre from all walks of life.

The terms of reference of the task force were a strong reflection of the Canadian approach, recognizing that,

1. the public interest requires the recruitment to public office of highly qualified individuals from diverse backgrounds to participate in the public affairs and public administration of Canada;
2. such office holders should carry out their official duties and arrange their private affairs in a manner that conserves and enhances public confidence and trust in government;
3. after their period of public service such office holders should be able to return to fulfilling employment within the community-at-large; and
4. the actions of former office holders should not cast doubt on the probity and impartiality of the public policy process.

The report of the task force was presented in May 1984 to Prime Minister Trudeau. On September 9, 1985, Prime Minister Brian Mulroney introduced the conflict of interest and post-employment code for public office holders as part of his "package of major initiatives on public sector ethics." The prime minister took care to note that while some of the thinking, and even some words, of the authors of the task force report were enshrined in the new code, it was an evolutionary document, and bore the clear mark of the government of the day.
In his opening statement, Prime Minister Mulroney indicated:

It is a great principle of public administration – I could even say an "imperative" – that to function effectively the government and the public service of a democracy must have the trust and confidence of the public they service. In order to reinforce that trust, the government must be able to provide competent management and, above all, to be guided by the highest standards of conduct.

He further added, in his open letter to members of Parliament and senators that:

While ultimate accountability for ethical standards is that of the Government, the Code continues to place the onus of responsibility on the individual public office holder for his or her own conduct. What is expected of each individual is clearly stated in the Code, which also provides a clear basis for assessing those individual judgements, as well as prescribing penalties for those who fail to meet expected standards.

Indeed, the new code marked a strengthening of the former conflict of interest and post-employment regime in that it:

- covered a broader population in a more definitive fashion than previously;
- included enforcement mechanisms that were lacking in the post-employment regime;
- placed an absolute prohibition on switching sides, just as a lawyer is barred from changing from one side of a case to the other;

- clearly allocated responsibility and provided for accountability;
- is fairer to individuals by taking into account both individual circumstances and the public interest; and
- is clearer and more precise, consolidating what was previously contained in five documents.

The conflict of interest and post-employment code for the public service, which took effect on January 1, 1986, is derived from the prime minister's code, and contains the same principles and represents an extraction of the provisions of the code which apply directly to persons for whom Treasury Board represents the government as the employer.

While the principles of the new code are quite similar to those previously in effect, the new code emphasizes the allocation of responsibility and the provision for accountability. A new feature, however, is that employees are required to sign a document certifying that they have read, understood and will observe the requirements of the code as a condition of employment. To aid employees in understanding the code, a videotape for instructional purposes was developed, and departments have conducted training and information sessions for employees.

One of the prime difficulties under the conflict of interest code is the onerous responsibility it places on an individual of making a formal judgment concerning a real or potential conflict of interest situation – in other words, in arriving at the same conclusion as an "impartial" public about such a situation.

The certification document which employees must sign provides a list of "exempt" (i.e., not subject to confidential disclosure) and "non-exempt" (i.e., possibly subject to confidential disclosure) assets and liabilities, and is designed to help employees examine their personal situation – holdings, liabilities and outside activities – in light of their official duties and functions. Employees can, in a systematic manner, determine whether they must file a confidential report or not. Where there is some doubt in an employee's mind as to whether particular circumstances can or might constitute a conflict of interest, the employee can consult with a designated departmental official and, based upon the information obtained, can arrive at a decision. In such circumstances, the employer rightly shares with the employee the judgment and the responsibility. Where circumstances so warrant, the designated official can direct the employee to divest assets or cease outside activities. In cases of dispute, redress mechanisms are available.

From a practitioner's point of view, one might ask, if the onus is on the individual to determine appropriate action why it was necessary or desirable to heighten attention to this area, for attention seems to get focused naturally when cases of public controversy arise. Personally, I feel that the ever-increasing complexity of modern government, the growing number of employees leaving the public service and taking up other careers, increased

dual employment and part-time employment have blurred the lines in this area. Also, in North America over the past decade, there has been a marked trend toward emphasizing the rights of the individual. This has resulted, with increasing frequency, in elected and non-elected public office holders being confronted with complex situations where their private interests may be confused with the public interest. It is imperative for all concerned to recognize quickly that for public servants, such conflicts must be resolved in the public interest.

I share the view that the success of any conflict of interest regime depends upon the goodwill and the sense of public service of public office holders. The correct balance between fairness to the individual and protection of the public interest is delicate and difficult to attain, but I do not feel that we need to legislate ethical behaviour. It is perhaps a bit like the signs one sees on the highways indicating there is a financial penalty for littering. I would like to think that the vast majority of Canadians do not throw litter on the highway not because if they do, they face a fine, but rather, because a pristine travel route is a desirable feature of Canadian life.

Grey areas: the challenge for management

How can one best deal with the grey areas? Conflicts of interest can occur in a variety of forms. Whether the elements are cases of actuality, potentiality or appearance, or some combination of these, they all can constitute "conflict" situations. While terms such as real, potential and apparent can be defined and understood, it remains a difficult task to apply them to individual situations.

Prevailing circumstances can lead to very different results when applied to situations that on the surface appear similar. Such factors as the nature of the employee's duties, the degree of influence exercised on departmental decisions as they affect the public, the nature of client contacts, if any, and the like, must all be weighed in themselves and in relation to the employee's personal interests.

Determination of conflict of interest is further complicated by the fact that such a conflict may exist notwithstanding the absence of wrongdoing on the part of the employee and notwithstanding that the employee's personal integrity, honesty or responsibility is above reproach. This presents a very delicate situation, which must be handled very carefully. However, when the private interests of an individual are at variance with his or her official duties and responsibilities to the government, a conflict of interest exists and must be resolved in the public interest in all cases. The conflict situation can run the gamut from one in which the individual seeks to use a position in government or confidential information received in government in a fashion proscribed by law, to one in which all that is involved is the appearance of a conflict. Private and public interests need not be in competi-

tion or conflict for an ethical problem to exist. The public interest could be abused equally where the private interests of an office holder coincide with the public interest so as to mesh together, with the result that in serving the public purpose the individual benefits privately as well.

The question of conflict of interest has existed since the first form of government was established. Concern about the subject ebbs and flows in direct relation to the frequency and intensity of allegations about the way government business has been conducted or revelations about improper conduct. While the application of instruments such as the new federal conflict of interest and post-employment code will reinforce the trust and confidence of the public, it would be naive to suggest that conflict of interest will disappear. In fact, this instrument, which permits a heightened awareness and thus a decreased absolute incidence of inappropriate activities by public servants, may lead to an apparent increase of conflict of interest situations. However, I am confident that, on closer examination, the facts will show that the already high standard of conduct in the federal public service will only increase as a result of the heightened awareness of what is expected.

Maureen H. Taylor
Alan E. Filmer

Moonlighting: the practical problems

The British Columbia government has been afforded the unique opportunity to review the approaches it has taken in personnel management because of the introduction of a new Public Service Act. This legislation shifts the emphasis from centralized control to a corporate personnel management philosophy and it requires the development and issuance of new or revised personnel policies to effect this change. Because the reference to engaging in outside remuneration is not contained in the new act, the subject of moonlighting is presently under review with the objective of drafting a new

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policy. This has necessitated an analysis of the issue and the problems associated with it.

For a variety of reasons, not always financial, employees choose to increase their income by seeking promotions, changing employers, or working overtime. Another common method is moonlighting: engaging in work or activity in off-work hours which provides additional remuneration. This activity has been a topic of considerable debate and controversy over the past few decades. Statistics on the proportion of workers involved in moonlighting are not easily obtained. This is due partly to the difficulty in defining the term and also to the lack of available or reliable reporting systems. Studies of workers in Canada and the United States suggest that approximately 5.5 per cent of the work force moonlights and that little fluctuation has occurred over the last twenty years. Some researchers, however, feel that this is a conservative estimate and that the size and scope of the activity is actually much larger. Likewise, data which profile employees who moonlight are also not readily available. Information from those studies which have been done suggests that moonlighting is most common at the highest and lowest levels in the organization and that moonlighters are most often married males with dependants or formerly married females.[1]

Definitions of moonlighting are changing. Traditionally it was defined as work outside a person's regular employment which took twelve or more additional hours a week. More recently, the concept of moonlighting has been expanded to include such activities as self-employment, investments, hobbies and other employee interests for which additional remuneration is received. The perception that moonlighting is a fixed outside commitment is no longer valid and the forms that it may take are varied and difficult to identify. Policies regarding moonlighting must take into consideration this increased range of activities and avoid using restrictive and highly specific definitions. More importantly, in setting the limits on engaging in outside remuneration, the employer should describe the type of activity about which there is a concern (e.g., working for a competitor) rather than attempt to develop an exhaustive list of appropriate and inappropriate types of employment.

Both positive and negative attitudes exist regarding the effects of moonlighting. Some concerns have been expressed that moonlighting has a negative impact on employee performance and organizational productivity. The reasoning for this has been that the additional work being done by the employee affects the energy that he or she would otherwise bring to the primary job and leads to poorer job performance, higher absenteeism, and reduced job commitment. On the other hand, there are some opinions

1 M. Jamal and R.L. Crawford, "Consequences of Extended Work Hours: A Comparison of Moonlighters, Overtimes, and Modal Employees," *Human Resource Management* (Fall 1981), pp. 18-23.

which detail additional benefits of moonlighting to the employer.[2] These include:

- better morale because it gives employees an opportunity to perform other more interesting work which, although enjoyable, is not feasible as a career;
- less frustrated employees since moonlighting provides an outlet for them to channel their energy and interests in a productive way and gain experience, stimulation, and responsibility which cannot be realistically incorporated into their primary job;[3]
- increased skill development, as employees may gain knowledge or experience while moonlighting which may be used in the workplace; and,
- lower turnover rates because the employer can retain talented employees even though it is unable to provide them with additional income or challenge.

While employers continue to be divided on the issue of whether moonlighting has a negative or positive effect, the available research suggests that no general relationship exists between moonlighting and any specific outcome.[4] It has not been shown to be related to an employee's job performance, mental health, or quality of life, to turnover rates, or to productivity. Thus, concerns regarding the negative effects of moonlighting are not substantiated. Studies support the argument that moonlighting should be treated as a personal matter and the primary employer should become involved only when an individual employee's moonlighting activities begin to affect the employer employee relationship or the employer's interests. In such cases, the problem should be addressed and resolved by the employee's supervisor or manager.

It is generally acknowledged that it best serves everyone if an organization develops and communicates policies on moonlighting.[5] In defining a policy, the question of the extent to which an employee's off-duty activity may be justifiably restricted must be addressed. It is not realistic or reasonable to impose an outright ban on moonlighting. Aside from the human rights issue such a policy would raise, moonlighting can be easily concealed and its prohibition would not as much eliminate the activity as drive it underground. It is more important to focus on defining those areas where the employer should limit employee activities because there is a legitimate interest to protect and on developing policy statements which articulate these restrictions.

2 R.L. Crawford, "Moonlighting: New Look for an Old Practice," *Supervisory Management*, 23, no. 81 (August 1978), pp. 2-9.
3 C. May, "Moonlighting - It's a Question of DP Ethics," *Data Management* (March 1985) p. 10.
4 C.T. Cory, "Moonlighting Becomes You," *Psychology Today* (June 1982), p. 16.
5 S. Habbe, "Moonlighting and Its Control," *Management Record* (July 1957), pp. 234-37.

Reasonable considerations in setting limitations on moonlighting activities are:

- if the activity is in direct competition with the employer;
- if the employee's work performance is affected;
- if the employer's property is being used to engage in the activity;
- if confidential information is being used by the employee;
- if the employee is using his her position to solicit business; or
- if the employee's activity could be perceived by the public to be a conflict of interest.

Absent from these considerations are socio-economic determinants and assessments of the labour market.

Arbitrators have also supported the concept that the employer has authority, control, and jurisdiction over employee's off-duty conduct. The restrictions that are considered valid relate to controlling those activities which detrimentally affect the employer's reputation; render the employee unable to fulfill his her obligations to the employer; affect the employee's ability to work with colleagues; or inhibit the employer's ability to manage the work place effectively.[6] In practice, therefore, the development of policy statements about moonlighting should address the following:

- conflicts of interest and the public perception of conflicts of interest;
- effect on work performance; and
- protection of employer's reputation and assets.

Problems arise in attempting to define conflicts of interest specifically. It is impossible to delineate all possibilities and any general criteria must be clear and defensible. The federal government identified this issue by stating that:

> Any attempt to identify the totality of potential areas of conflict would be a task of great magnitude, could never be totally comprehensive, and would require constant review and interpretation. Instead a more workable approach has been taken to identify certain principles, the violation of which would establish a conflict of interest. With these published principles, the overall intent is established and actual situations can be scrutinized to determine whether the principles are respected.[7]

It is, however, possible for an employer to articulate these principles sufficiently enough that employees or supervisors can review and make appropriate judgments on individual cases. Reported abuses or problems associated with moonlighting activity are relatively few. Therefore, general principles regarding conflicts of interest are sufficient to control problems as

6 D.J.J. Brown and D.M. Beatty, *Canadian Labour Arbitration* (Canada Law Book Ltd., 1984).

7 Government of Canada, *Personnel Management Manual*.

well as to provide the basis for disciplinary action should that become necessary.

It is difficult and unnecessary to be specific when developing moonlighting policy statements which make reference to work performance. It is simpler to state only that moonlighting activities should not affect work performance. Variations exist in employees' energy levels and some are capable of working longer hours than others. Therefore, placing limits on the number of hours an employee may work outside his/her primary job is not practical. Furthermore, the total number of hours per week worked by an employee who moonlights is often fewer than the average work week of two or three generations ago. Effects on work performance should also include considerations such as the employee's availability to work overtime if this is an employer expectation and restrictions on the time an employee can devote to his or her outside job while performing the primary one (e.g., telephone calls, client visits). Work performance problems resulting from moonlighting activity are most visible at the supervisor/subordinate level and for that reason best dealt with there.

Policy statements which protect the employer's reputation and assets are, most often, included in broader policies on standards of conduct rather than related specifically to moonlighting activity. There should be a clear expectation that any actions related to moonlighting should fall within the established standards of conduct.[8]

Once a policy statement has been developed, decisions regarding its administration must be made. Those organizations with policies about outside remuneration have generally taken one of two approaches. Some hold employees accountable for interpreting and adhering to the policy while others retain the authority for approval centrally and review each request to moonlight individually. Either approach may lead to inconsistent application of the policy but this is reduced primarily by the clarity of the policy language.

Research shows that the problems which result from moonlighting are few and controllable on an individual basis. This suggests, therefore, that an elaborate approval system which involves varying levels of approval authority and detailed forms is simply not necessary. A moonlighting policy for which employees are held accountable is just as effective provided it is clearly communicated.

Arbitrators have made no distinction between these administrative approaches (employer versus employee accountability) when ruling on discipline resulting from alleged policy violation. The criteria for enforcing policy focus more on the employer's responsibility for ensuring employees are aware of and understand the policy. When the employer has fulfilled

8 P.J. Davey and J.K. Brown, "The Corporate Reaction to 'Moonlighting'," *The Conference Board Record* (June 1970), pp. 31-35.

this obligation, the disciplinary action taken when policies are violated is, generally, upheld.

Having developed a moonlighting policy, the employer must communicate it to employees. Some organizations have taken a structured approach by distributing policy statements, often in the form of pamphlets, to new employees and requiring supervisors to review the contents with them. Other employers rely on the topic being discussed during the orientation of a new employee or explain their policy only when a question is raised. As noted earlier, the success of any disciplinary action resulting from a problematic moonlighting activity is contingent upon the employer's success in demonstrating that not only was a policy in existence but also that it should have been known. The onus is clearly on the employer to do this.

In summary, the issue of moonlighting is most practically and simply addressed if the employer develops a policy and ensures that it is communicated clearly to its employees. The reasonable limits for this policy are those required to protect the interests of the employer. These are generally related to ensuring work performance is not affected, conflicts of interest do not exist, and the employer's reputation is not damaged. Because there is no evidence to suggest that frequent problems occur when employees engage in moonlighting activities, the issue should be kept in perspective. Complex administration approval systems are neither necessary nor appropriate for dealing with the relatively few problems resulting from moonlighting. Those problems which do arise are most effectively dealt with on an individual basis.

Davis Carvey

Gifts and bribes: the purchasing agent

There is little question that your purchasing agent is a key person; just think back to the last time you or someone else in your organization had an important project delayed for lack of equipment, materials, or supplies. Unfortunately, for many of us what should be a close working partnership with purchasing personnel is marred by a nagging suspicion – too often reinforced by horror stories in the media – that the purchasing agent is "on the take." This paper will look at some of the potential problem areas and their sources, how purchasing agents respond to potential questionable practices, and some ways to deal with these problems.

Purchasing agents operate under enormous pressure from a variety of sources. Some of these pressures stem from the fact that purchasing agents are "boundary spanners"; that is, they interact on a regular basis with personnel in a variety of other departments both within and outside their own organizations. The result is that they are often the focal point of complex conflicting demands from sources beyond their control.

The purchasing agent must balance the demands stemming from several key relationships. These include relationships with present and potential suppliers, other buyers, his or her manager, higher levels of management, and other departments (e.g., accounting, engineering, production or service-producing groups, and marketing or other outreach groups).[1] Clearly, the buyer-supplier relationship has considerable potential for ethical conflict. While not so obvious, other relationships may also raise difficult conflict of interest issues (e.g., engineering insists on the highest possible quality while purchasing is trying to reach a mandated cost reduction target).

A number of what have been termed "sensitive practices" have been well described in the literature.[2] However, due to space limitations this discus-

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1 William Rudelius and Rogene A. Buchholz, "What Industrial Purchasers See as Key Ethical Dilemmas," *Journal of Purchasing and Materials Management* 15, no. 4 (Winter 1979), pp. 2-10.

2 Robert I. Felch, "Standards of Conduct: The Key to Supplier Relations," *Journal of Purchasing and Materials Management* 21, no. 3 (Fall 1985), pp. 16-18.

sion will deal only with the issue of gifts and bribes. Several surveys of purchasing agents have been made to determine their views as to what constitutes "ethical practice" in the buyer-seller relationship. One of the most comprehensive studies was a national survey of US purchasing personnel conducted for the National Association of Purchasing Managers. Table 1 shows the findings with regard to a number of specific practices.[3] As can be seen from the data, while some items clearly are more acceptable than others, there is no real consensus.

TABLE 1
Offers, Acceptability, and Actual Acceptance of "Favours."

	% offered by vendors	*% rated acceptable*	*% actually accepted*
Lunches	98	90	87
Advertising souvenirs	96	92	87
Dinners	90	70	76*
Tickets (sports, theatre)	86	60	19
Christmas gifts	85	50	49
Trips to vendor plants	83	51	34
Golf outings	74	47	33
Food and liquor	65	29	9
Discounts on personal purchases	46	21	9
Small appliances	33	6	5
Vacation trips	26	2	1
Clothing	15	3	3
Large appliances	13	1	–
Loans	3	1	–
Automobiles	2	1	–

*It seems that some individuals accepted dinners even though they questioned its propriety.

Three primary approaches to minimizing unethical purchasing practices will be suggested. The first and foremost approach is to have written policies/procedures delineating ethical purchasing behaviour. (Numerous examples are available in the literature.[4] Care must be taken in writing these policies to retain the flexibility necessary to deal with ambiguous situations. Research evidence shows that having a written policy lessens the frequency of unethical practices.[5] To be effective, of course, the policy must be

3 Ernest D'Anjou, "IIT Center Completes Ethics Survey for N.A.P.M.," *National Purchasing Review* (January-February 1979), pp. 2-6.

4 Several excellent examples are in Robert C. Parker, ed., "Ethics in Purchasing," in Paul V. Farrell, ed., *Aljian's Purchasing Handbook*, 4th ed. (New York: McGraw-Hill, 1982), pp. 7-1 through 7-24.

5 Robert L. Janson, "Unethical Practices: What Kind of Manager?" *Midwest Purchaser*, (September 1977), pp. 48-50.

clearly communicated to the affected parties. A written policy provides several important benefits: it leads to consistency in handling potential problems; it communicates its importance as an organization standard; it provides justification for a purchaser to "do the right thing"; it serves as a warning by stating penalties for noncompliance; and it gives the organization a degree of legal protection.[6]

The second approach to ensuring ethical purchasing relationships is to regularly audit purchasing practices, particularly with regard to compliance with policies/procedures. The third approach is to formally subscribe to a code of behaviour/ethics such as promulgated by an appropriate professional organization. Numerous examples of codes are available in the literature.[7]

6 William Rudelius and Rogene A. Buchholz, "Ethical Problems of Purchasing Managers," *Harvard Business Review* 57, no. 2 (March-April 1979), p. 14.

7 For example, the National Association of Purchasing Managers, National Institute of Governmental Purchasing, Institute of Purchasing and Supply, International Federation of Purchasing and Materials Management, and the Purchasing Management Association of Canada all have formal ethical codes and standards. *The Model Procurement Code for State and Local Governments* published by the American Bar Association also suggests statutory provisions covering ethics, conflict of interest, and related issues.

A.R. Dobell

The public servant as God: taking risks with the public

You can't avoid playing God

When considering our own acts, most of us acknowledge that we live in an uncertain world and that all activity involves some risk. It is clear that through even the most commonplace decisions we impose risks on ourselves and others. Sometimes these risks are so small and ordinary that we ignore them, as we do with the risks of driving to the shopping centre or considering different modes of transport for a business trip; at other times we acknowledge and weigh them explicitly, as in deciding whether or not to take up skydiving or to increase life insurance coverage. But acknowledged or not, risks are always present.

Public policy decisions are also commonly accompanied by risk. This is not surprising, for there is no reason to expect that decisions made collectively should be exempt from the risk consequences that characterize private decisions. Moreover, even if an issue of public risk is not initially an area of government activity, it is likely to become one because of the strength of the public's perception that one of government's duties is to protect them from danger. Government is naturally drawn into any area where there exists a real or perceived public risk, in order to regulate it; government is then necessarily involved in the subsequent decisions of how and how much to reduce risk, and at what cost.

There is much resistance to the idea that government decisions impose risks on people. Public servants or politicians may respond with indignant denial if accused of taking risks with the health or safety of the public. Perhaps they do so because to admit otherwise would involve too great a personal risk. But thoughtful examination reveals that many decisions in the life of a public servant do just that. Even if we neglect economic risks and consider only risks to life and limb, areas of public policy as diverse as public health, environmental regulation, product safety, occupational safety, incomes policy, investment in industrial facilities, criminal justice, and foreign policy all have risky consequences.

The author is president, Institute for Research on Public Policy. This paper is based in part on a longer forthcoming working paper jointly prepared with Ted Parson, whose contribution is acknowledged. Responsibility for errors rests with the senior author (Dobell).

The truth of this claim is most evident at the political level, where major policy directions are determined. But it is just as true that managers in the public service routinely make decisions involving public risk, both in their roles as advisors of ministers and as administrators of programs and policies. When a city official decides whether to install new street lighting; when a highways official chooses on which of several possible improvement projects to spend a limited budget; when a parole officer decides on the status of a released prisoner; when an environmental official chooses how forcefully to act against a factory violating emissions standards; or when a provincial official considers whether to permit herbicide spraying on hydro rights of way, all are making decisions with direct consequences for public risk.

Since you cannot avoid taking risks with the public, you presumably should ask how you can best do it in a rational, fair, and defensible manner. In this paper, I hope to offer some insight into why public decisions on risk are often so difficult and so divisive. The difficulties are of several kinds, with their roots in the ambiguous nature of individual decisions, in the environment of scientific uncertainty that often prevails, and in the difficult distributive issues that are raised. I will also offer some tentative suggestions as to how decisions on risk might be improved. For those readers who wish to pursue this subject in more detail, a forthcoming IRPP working paper, prepared with Ted Parson, will offer a fairly substantial literature survey.[1] Like that survey, this present paper will focus on problems involving risks of personal injury or death, rather than on more concrete questions of economic loss or more abstract social risks.

Individual decisions on risk

The most reasonable place to begin an inquiry into public decisions on risk is with an examination of how individuals make risky decisions on their own behalf. Amazingly enough, this gets us into severe trouble at the outset. There exist two large bodies of research into individual decision-making on risk. One of them is prescriptive, and has its roots in economics and statistical decision theory; it extends the notion of economic logic to uncertain situations and proposes axioms governing how an ideally rational person should act in the face of risk. The other is descriptive, and has its roots in psychology; it begins with experimental observations on how people actually make decisions under uncertainty. The difficulty is that these two approaches yield results that are fundamentally in conflict. The normative theory of how people should behave (or of how ideally rational economic people do behave) does not even approximate how people really do behave in experimental situations.

The normative theory represents an attempt to extend the definition of

1 Rod Dobell and Ted Parson, "Collective Decisions Involving Risk: A Literature Review," IRPP working paper (Victoria: Institute for Research on Public Policy, August 1986).

the economic person to situations of uncertainty. The economic person, you will recall, is the one who knows precisely what he or she wants, and is willing and able to undertake the calculations necessary to make the best choices possible in pursuit of those known objectives, within the relevant constraints such as a limited income or limited resources more generally.

When the world is risky the economic person must make choices not knowing what the outcomes will be, but having only estimates of the probabilities of various outcomes. The theory of rational choice under uncertainty dictates how such a person should weigh evidence in order to estimate probabilities, and how he or she should choose an action once probability estimates are derived. Two cornerstones of the theory are the assumptions that only the values of various outcomes – the actual consequences – and their probabilities of occurrence should matter, and that preferences should be linear in probabilities. (This means that if a certain event is desirable, you should rate a 20 per cent chance of that event occurring as exactly twice as desirable as a 10 per cent chance.) Given these assumptions, if you follow the prescribed rules, you will maximize your welfare in the long run. This theory could be described as a theory of ideal gambling.[2]

It offers an elegant and attractive theory; violation of any of its axioms can be shown to lead to inconsistent or ridiculous choices. Unfortunately, the evidence of psychological experiments points very strongly to the conclusion that people do not act as prescribed. And the ways in which people violate this code of behaviour are not minor and haphazard, but large and systematic.

The principal workers in this second field of research have been the psychologists Daniel Kahneman of UBC and Amos Tversky of Stanford. They have performed a large number of experiments in which they ask people to estimate probabilities or to make choices between risky propositions when the probabilities are given. Again and again they have found that even the most basic requirements for the normative theory of decision-making on risk are violated by people's real choices.[3] Most crushing for the normative theory has been their observation that people's preferences depend strongly on what they call "framing," the way that risky propositions are expressed. For example, they find that most people, if forced to choose between a certain loss of $50 and a 25 per cent chance of losing $200, prefer to chance the $200 loss; but when the certain loss of $50 is called an insurance premium, most people prefer it.

In another experiment more directly related to risks to life and limb, they asked a large number of physicians whether they would recommend

2 See, for example, Howard Raiffa, *Decision Analysis* (Reading, Mass.: Addison-Wesley, 1968).

3 D. Kahneman and Amos Tversky, "Prospect Theory: An Analysis of Decisions Under Uncertainty," *Econometrica* 42, no. 2 (1979), p. 263.

treating lung cancer in a forty-five-year-old man with radiation or with surgery. To one group they showed probabilities of dying during treatment and of dying within five years – e.g., with radiation you have a zero chance of dying during treatment but a 78 per cent chance of dying within five years, while with surgery you have a 10 per cent chance of dying on the operating table but only a 66 per cent chance of dying within five years. To the other group they showed the same results expressed in terms of probability of survival – i.e., 100 per cent chance of surviving radiation treatment, etc. The shocking result was that the fraction of physicians preferring radiation to surgery was strongly dependent on which of these two forms of expression was used. Only 16 per cent of the doctors recommended radiation treatment when the figures were expressed in terms of survival, while 50 per cent recommended it when given mortality figures. This influence of framing is particularly remarkable when you consider that these are experts making a professional judgment on a potentialy critical matter falling squarely within their domain of specialization.

Other experiments show other strong and systematic violations of the normative theory. One example is that people apparently cannot properly handle small probabilities, say of one in a thousand or smaller. Our mental arithmetic with such small probabilities displays a strong threshold effect. Until something brings it to our attention, we tend to ignore an event with such a low probability, that is, we treat it as if its probability were zero. But once we have acknowledged it as possible, we then greatly overestimate its likelihood. An example is the widely observed tendency of people to overestimate the probability of certain rare and dramatic causes of death, such as botulism or radiation exposure. This phenomenon has been demonstrated by Slovic, Fischhoff and Lichtenstein,[4] who asked people to estimate the number of fatalities per year in the United States due to various causes, after informing them that fifty thousand per year die in auto accidents. Their results show that rare deaths are overestimated by factors as high as several hundred – botulism, for example, which kills two people per year, is estimated to kill five hundred – while the most frequent causes of death are all underestimated. The same bias in a different context has been found by Bill Ziemba of UBC in his studies of betting at racetracks. He finds that people bet too often on long shots and not often enough on favourites, and this market imperfection has, it is claimed, been exploited to develop an effective betting system.

Kahneman and Tversky[5] have argued that we assess probabilities through the use of heuristic devices, or rules of thumb, that are biased or irrelevant. They name three heuristics: availability, representativeness, and anchoring. We use the availability heuristic when we estimate the probability of an

4 P. Slovic, B. Fischoff and S. Lichtenstein, "Rating the Risks," *Environment* 21, no. 3 (1979), pp. 14-20, 36-39.

5 "Prospect Theory."

event by the vividness of our images of it or the ease with which instances of it can be called to mind. It is exemplified by the higher probability that people assign to airline crashes immediately after a large well-publicized crash. The representativeness heuristic causes us to estimate the probability of an event by how representative it is of the class of events to which it belongs. We are employing this heuristic when we count the observation of a licence plate number 22222 as less likely than 43781, or when we succumb to the "gambler's fallacy" and expect that a tossed coin is more likely to come up heads after a long run of tails. Anchoring is the process by which people select an initial value for their estimate of a probability or other unknown quantity, and then incorporate further information by making small adjustments to their initial value. The initial guess continues to exercise a significant influence on the final estimate, even in the presence of strong opposing evidence.

The anchoring heuristic can be regarded as a tendency to place too much confidence in the first guess, and consequently is related to the often-observed overconfidence that lay subjects and experts alike place in their estimates of unknown quantities. In an experimental demonstration of this overconfidence, researchers at MIT gave seven engineers all the relevant technical information about an earthen embankment, then asked them to estimate the height at which it would fail. Two of the engineers substantially overestimated and five underestimated the height of failure, but, more remarkably, not one gave a confidence interval wide enough to contain the true (experimentally measured) value.

Perception of risk has also been shown to depend on several other factors, including the credibility of the source of information, whether or not the risky activity is undertaken voluntarily, and the distribution of risks. For many sources of risk, the public does not have access to authoritative information, but must learn about the risk from newspapers, television, government announcements, or other intermediate sources. The way people view any particular risk depends in some complex way on the perceived credibility of the source of information. An Ontario Gallup poll concerning credibility of sources of information about nuclear waste disposal found that university scientists and the media were rated the most credible, while government sources were rated rather low in credibility. An official of the Ontario Ministry of the Environment has pointed out that there is a perverse assymetry in the public's reaction to information from the ministry; bad news is believed, but good news is not. The principle of the media that bad news makes more dynamic copy than good may contribute to this phenomenon. Another curious assymetry in the public's attitudes to government is pointed out in a 1984 University of Waterloo study[6] on hazardous

6 Institute for Risk Research, University of Waterloo, "Risk Management in the Transportation, Storage, and Disposal of Hazardous Materials," draft report for the Canadian Committee for the International Institute for Applied Systems Analysis (IIASA), 1984.

waste transport. People generally perceive government regulatory bodies as having been too cosy with the industries they regulate and having failed in the past to protect adequately the public interest. Yet their expectations of government's protecting their interests in the future, and their assessment of government's power to do so, are very high.

Starr was the first to emphasize that whether or not an activity is undertaken voluntarily is an important determinant of what associated risk will be regarded as acceptable.[7] He hypothesized that people will accept risks approximately a thousand times greater from voluntary activities (smoking, skiing, hang-gliding) than from involuntary sources (air and water pollution, pesticides in food, living near a refinery).

More recent surveys suggest that many factors other than voluntarism are also relevant. Slovic *et al* surveyed how the overall risk level of a number of sources was related to other perceived attributes, and found that total perceived risk could be accurately predicted on the basis of three measures: "novelty," which increased as the risk was less similar to known risks, less evident to those exposed, and more immediate in its effects; "dread," which increased as the risk was less controllable, less equitable in effect, more catastrophic, involuntary and fatal, and as the risks were borne more by children and future generations; and "extent," the number of people exposed.

As noted earlier, Kahneman and Tversky have developed a consistent descriptive theory of people's choices that accommodates these results, called prospect theory. These two theories of people's decision-making under risk, the normative Bayesian decision analysis and the predictive prospect theory, are unquestionably in conflict. People do not act as the theory of rational choice says they should. Furthermore, it is unlikely that any other theory will be found to reconcile the two, for any theory to be descriptively valid must reflect the dependence of people's preferences on framing, but surely no normative theory could be susceptible to framing. That is, no rational decision process could let the decision rest on the way it is described rather than on the objective outcome.

This conflict between rationality and people's observed behaviour must, however, be treated with caution, particularly if one's reaction is to conclude that people do not know what is best for them and need to have their risk choices made for them by scientists and experts. The first caution is that scientists and experts appear to be as prone to these errors of judgment as anyone else. Much of Tversky and Kahneman's experimental work was performed with scientists and physicians as subjects, and the biases and heuristic devices described here have been observed to be employed by lay people, by scientists making judgments outside their area of expertise, and by

7 See, for example, C. Starr and C. Whipple, "The Risks of Risk Decisions," *Science* 208, (1980), pp. 1114-19.

scientists in their own fields when the data presented were insufficient to calculate a precise solution. Moreover, the problem of overconfidence in predictions has been observed to be the most pronounced in the judgments of experts. We are clearly all prey to these biases, errors, and misperceptions.

At the individual level, the conflict between these two models of choice merely suggests that if we wish to act like economically rational people, we must police our own personal decisions on risky matters very carefully. But for the public servant with official responsibility for making decisions that will impose risks on others, the conflict makes for a profound dilemma. Should you choose for others as they would choose for themselves, knowing that such a choice does not represent their best interests, or should you choose as an ideally rational person would, knowing that the people affected may oppose the choice that you are making on their behalf?

Problems of collective choice

As if the foregoing were not problem enough, there are several other aspects to public decisions on risk that make them even more difficult. Many public decisions on matters of risk – certainly most of the contentious ones – must be made with very poor information. For certain issues, such as the siting of energy facilities and the transport of hazardous goods, the reason is that the resultant risk is principally due to the chance of disastrous accidents, whose probability of occurrence is very low. The total public risk from a decision may depend very strongly on whether a particular kind of accident will happen on average once per thousand years or once per hundred thousand, but there is no reliable way to distinguish between these two values. Theoretical attempts to do so are filled with arbitrary and questionable assumptions, while attempts to do so on the basis of evidence are thwarted by the fact that the small number of occurrences of such events to date are consistent with a wide range of true probabilities. On observing the first occurrence of such an event, one does not know whether one has simply observed a rare event, or has just seen cause to revise probability estimates dramatically upward.

For other decisions, such as whether or not to allow herbicide spraying on hydro rights of way, the size of the risk may depend on the toxicity of low public exposures to a hazardous substance. Information on the magnitude of these hazards is also hard to obtain. Evidence on the toxicity of chemicals usually comes from epidemiological studies of large human populations, in which a statistically significant increase in the incidence of cancer, for example, is sought in the group with higher exposure to a chemical. Such studies are limited in their ability to detect other than the most acute effects by the difficulty of finding two groups whose only significant difference is their level of exposure, and the difficulty of distinguishing a true underlying increase in the cancer rate of one group from random fluctuations in the incidence among groups.

Improvement in our knowledge on these issues through experiment is usually not available. The experiments that are performed, in which large numbers of animals are exposed to high doses of the suspected hazard, are costly, slow, and possibly of limited relevance because of the problems of drawing inferences from animals to humans and from large doses to small ones. If the animal rights activists prevail, even this imperfect source of information may cease to be available. Experiments on humans would necessarily involve exposing a group of people to a suspected hazard, and so are ethically and legally proscribed.

With so little opportunity to settle disagreements through evidence, it is not surprising that there exists vigorous scientific disagreement on questions of risk. The common tendency to exaggerated confidence in the accuracy of one's predictions reported above exacerbates such disagreement. So do the pressures created for advocacy research through the political use made of the answers to such trans-scientific questions.

Obscure and complicated scientific questions also provide ample opportunity to project one's values into one's scientific opinions. A study by Manne and Richels[8] provides an interesting example. In a survey of the opinions of American scientists on a variety of issues in energy policy, they found a very strong correlation between low estimates of uranium reserves, high future demand growth for electricity, and high costs for photovoltaic electric cells. The correlation between such apparently unrelated opinions was thought to be explained by the fact that these scientists favoured the development of the breeder reactor. Those who opposed the breeder had an equally strong clustering of their opinions around the opposite extremes. In each case, it appears that a policy opinion on the desirability of the breeder had organized a disparate collection of opinions on issues of fact to support it.

One topical example of all of these phenomena is the current controversy over the federal government's financing the removal of urea formaldehyde foam insulation from homes in which it had financed the installation a few years ago. Apparently, no one knows how dangerous this product really is. When it was in the homes, people's fears over its possible carcinogenicity and other health effects led to a public outcry that the government pay for its removal. Now that the government is doing so, it is being criticized for wasting the taxpayer's money. These events illustrate that where risk to the public is concerned, you can be denounced for being too careful as well as for being careless. And this is so even if no one can tell for certain what level of care is appropriate. It has been argued that the government is right to pay for the removal of the insulation even if it represents no significant risk,

8 A.S. Manne and R.G. Richels, "Probability Assessment and Decision Analysis of Alternative Nuclear Fuel Cycles," in G. Sachs, ed., *National Energy Issues: How Do We Decide* (Cambridge, Mass.: Ballinger, 1980).

because people's subjective perceptions of the risk have caused large objective losses in property values for the affected homes. But this argument does not resolve the problem, for if the market is merely reflecting people's exaggerated fears, such an argument would suggest that public decisions should be made on the basis of perceived risk, even when the perceptions are incorrect.

Public decisions that have both an economic component and a risk component always involve some assignment of a monetary value to a human life. This argument is rarely done explicitly, but it is always there. Whenever you decide how much money to spend on the reduction of a risk, you have implicitly assigned a value to life. A number of studies have been done comparing the levels of spending on risk reduction in a number of programs or ministries, in order to find the implied values of lives lost. These studies have found enormous ranges in the implied value of a life, from a few thousand dollars (in automobile safety, for example) to tens of millions or even billions (in the safety features of nuclear power plants, for example). While a strong argument can be made that disparities of this order are too high, there is a great deal of controversy over the question of what an appropriate value for a life is.

A large academic literature attempts to address this question, either by evaluating the loss of earnings resulting from an early death or by examining individuals' willingness to pay for small reductions to the risk they face. Studies observing the market for risky occupations have calculated values for a life ranging from $200,000 to $2 million. Such studies purport to measure individuals' willingness to pay to save their own life.[9] But when risks and benefits accrue to different people, as they almost always do, we must address questions such as, should some be made less safe in order that others be made safer? By how much? Or, more poignantly, should some be made less safe in order that others can be made wealthier? By how much?

A utilitarian would argue that to maximize total benefit we must assign an appropriate value to a life and take all measures available to save lives at less than this cost. But perhaps not all lives should be valued equally; perhaps the lives that are most at risk should be valued highest. This stance corresponds to the increase in our willingness to pay for risk reduction as the risk to our own life increases, and also reflects the social values inherent in our often-observed willingness to spend far more money (and often to put additional lives at risk) in order to rescue particular individuals from peril than we are to avert a peril before the victims are known. Further, perhaps we should be willing to pay more to save a young life than an old one.

The difficulties discussed so far are features particularly associated with

9 See, for example, Howard Raiffa, *Decision Analysis*; E.A.C. Crouch and R. Wilson, *Risk-Benefit Analysis* (Cambridge, Mass.: Ballinger, 1982) or D.B. Hertz, and H. Thomas, *Risk Analysis and Its Applications* (New York: John Wiley and Sons, 1983).

decisions on risk. But decisions on risk are also beset by a host of other difficulties that are common to a broad range of political decisions. Issues of risk usually involve unequal distribution of risk and monetary costs or benefits to different people, and so create winners and losers. This raises difficult ethical questions in deciding when a benefit for society as a whole justifies the imposition of a risk that falls especially heavily on a small target population, with realized serious adverse consequences for even fewer. It also has the consequence that risk decisions are made in a charged political environment in which the prospective winners and losers use all the means at their disposal to try to influence decisions in their favour.

There are abundant examples of public decisions on risk with distributive consequences. A recent decision regarding compulsory reporting of pilots' medical conditions reduces the right to privacy of one group in order to achieve a reduction in risk for society as a whole. Recent controversy over compulsory reporting or even quarantine for victims of AIDS concerns the same issue. Decisions on the transport and disposal of hazardous materials or the siting of large industrial facilities such as chemical plants, refineries, LNG facilities or power plants all involve the imposition of elevated risks on the people who live nearby for the economic benefit of society as a whole.

The intrinsic difficulties of decision-making under risk cited above make the political decision process for such issues particularly vulnerable to tactical manoeuvring. The shortage of compelling scientific evidence on most contentious risk issues and the accompanying widespread expert disagreement make it possible for almost any position to find credible expert support. And the widespread adherence to the homily that "we the government do not take risks with the public" makes any proposed decision into an open target for its opponents; any decision that results in public risk, as all do, can be portrayed as government's failing in its responsibility to protect the public.

All of these problems make the resolution of public policy issues of risk extremely difficult. But they are also among the most important questions we face, as is indicated in part by the controversy they generate. Many of the most hotly contested policy disputes of recent years have had major risk components – for example, nuclear power, pesticides, and the transport and disposal of hazardous chemicals. Moreover, both government policy and public opinion have been profoundly inconsistent in their treatment of various risks.

What can be done?

This list of problems besetting the making of public decisions on matters of risk is certainly formidable, but it does not justify throwing up one's hands in despair. Although we really cannot know what risks we face, we still have to make decisions, both personal and professional. And there is some guidance that can be offered to help a public servant make the best decisions on matters of risk that are possible under the circumstances.

First, there are a couple of positions that one would do well to avoid. The contentious and uncertain environment that characterizes issues of risk can give public officials a strong incentive to protect themselves from censure. There are two patches of political high ground available, either of which might seem attractive under some circumstances. The first is occupied by exaggerating the clarity and certainty of the scientific facts relevant to the decision and pretending that these facts make the best course of action so overwhelmingly apparent that there is only one possible decision. Uncertainty is suppressed, values rolled up with facts, and personal responsibility is successfully avoided with the words, "The numbers made me do it." This stance is more readily available the further one is from the political level.

The second patch of high ground lies in the opposite corner. It is occupied by exaggerating the lack of factual knowledge available, asserting that questions of public risk are entirely issues of values, and referring every difficult risk decision to polls or referenda for resolution. Uncertainty is exaggerated, facts rolled up with values, and personal responsibility is successfully avoided with the words, "The people have spoken." This stance is more readily available the closer one is to the political level.

These two stances are of course caricatures, and neither represents responsible behaviour for a public servant. But within these patches of high ground the water is very muddy. Public servants must somehow balance their greater access to relevant knowledge and time devoted to thinking about issues of public risk against the preferences of the public as they perceive them.

The first issue that has to be addressed is the disparity between people's observed choices on risk and rational choices. It seems clear that responsible conduct by a public servant must favour the normative approach rather than the descriptive one. People may misjudge their interests, but if you are charged with serving their interests and acting in the public interest, you surely have a responsibility not to base your decisions on such misperceptions. The obvious difficulty with this approach is that it moves dangerously close to paternalism, or disenfranchisement of the populace. If we presume that the public servant knows what the people need better than they themselves do, then how is an informed and responsible public to make its views prevail when a public servant acts arbitrarily?

Amos Tversky, one of the architects of prospect theory mentioned above, insists strongly that this theory should not be taken as a guide for decisions on behalf of others, but that in such contexts only the normative economic approach makes any sense. He compares his theory to the theories of perception that describe how people are susceptible to certain kinds of visual optical illusions and argues that we should no more make prospect theory the basis of public policy on risk than we should make the theory of visual illusions the basis of our system of measurement of lengths.

A way of balancing the proxy and paternalistic approaches to public decisions was suggested by a participant in a Royal Society conference on risk a few years ago. "If the public, knowing that botulism causes only two deaths per year, wishes to devote disproportionate resources to protecting against it, then I accept the democratic decision. But if the public opinion is based on a misperception of five hundred deaths per year, then I believe I should appeal the decision." And indeed contest it.

Suppose that you have decided to try to be rational in a decision on a risky matter and not be swayed by personal or public misperceptions. What do you do? Although much of the information you need may not be available, you can get some help from taking a systematic approach to the problem and describing the possible consequences of your decisions in terms of numerical probabilities. There may be evidence available in the form of relevant experimental or theoretical scientific results, that can help you estimate both the likelihood of certain things happening, such as certain kinds of accidents, and the likely magnitude of their consequences.

There are techniques, gathered under the rubrics of risk-benefit analysis or quantitative risk assessment, that can help combine relevant information from a wide variety of sources to estimate the total risk resulting from any choice you may make, and to indicate how much uncertainty there is in the estimate. These techniques have vigorous defenders who proclaim that they are the ultimate answer to difficult decisions involving risk, and vigorous opponents who claim that they are of no value whatever. In fact, their mathematical sophistication cannot finally make up for the profound uncertainty that may prevail in the fundamental data that go into them, and so the estimates of risk that they generate are often rather crude. But they nevertheless have strong advantages over the alternative methods of making decisions on risk, most of which fall under the categories of intuitive expert judgment, precedent and current practice, or uninformed guessing.

To estimate the consequences of a particular event or exposure level, these techniques can combine data from epidemiological studies, animal experiments, and known biological or physical mechanisms of injury. These data are combined with estimates of the number and sensitivity of people exposed, and physical models of the dispersion and dilution of hazards to give estimates of the total consequences in terms of numbers of injuries or lives lost. To estimate the probability of accidents of specified severity occurring, a technique known as fault tree analysis is used, which allows reliability data from many industries to be employed. Probabilities are estimated by considering the chains of events that can lead to an accident. One asks first, in order to have an accident what must have happened? Then, in order for each of those events to happen, what must have happened? By reasoning backwards from a hypothesized accident to the simpler events and logical connections between them that can have caused it, the problem of estimating the total probability of an accident can be reduced to

the combination of a large number of simpler probabilities for such events as failed switches, stuck valves and broken pipes, which may be well known from a long history of operating experience.

These techniques can expose and clarify the assumptions about unknown probabilities that go into your estimates of risk. They allow you to combine whatever information is available on a given feature to make a best guess, and then let you test how sensitive the total calculated risk is to your guess. This is a strong advantage over other approaches, which also require guesses but usually bury them in an informal argument so that they can neither be seen nor tested. By making your thinking about an issue of risk more systematic, these techniques can also call to your attention significant sources of hazard that you would have otherwise overlooked.

As usual in the field of public policy, a formal risk analysis does not tell you what the best choice is, but merely clarifies the consequences of each choice to allow a well-informed political decision. The value issues are not resolved by the analysis. Explicit decisions may be required on such matters as how much you are willing to pay to save a life, or how much disparity in risk between two groups of people is acceptable, or how much you are willing to pay to reduce such a disparity. But at least these decisions can be made explicit and subject to political debate, and consequently a formal analysis separates as much as possible this process of value-based decision from the process of describing the consequences of various possible decisions.

The most significant drawback to formal risk analysis lies in its capacity for misuse. Its numerical results lend it a sense of authority and exactitude, even though they are always based on a large number of technical, economic, and social assumptions; it can thus be used to give a spurious image of certainty to a truly uncertain issue, to present value judgments in the guise of facts, and to bolster the "numbers made me do it" stance caricatured above. Used correctly, it represents the best chance to separate issues of fact from issues of values in the decision-making process. But the extent to which this goal is achieved depends strongly on both the quality of the analysis and the quality of its communication.

By providing estimates of how much various groups of people are put at risk by a decision, a formal risk analysis can also help in determining appropriate government measures to mitigate, compensate, or share risks. When the public benefit requires the imposition of a risk that falls especially heavily on a few, then the resultant inequity can to some extent be reduced by providing monetary compensation or insurance for those who bear the increased risk. People who live near a proposed industrial facility, say an LNG terminal, that exposes them to some increase in risk may be more willing to accept it if the industry or the government offers a lump-sum payment to compensate for the decrease in the value of their property, or insures them for losses resulting from the plant.

Compensation for the loss of property value that results from a risky or unpleasant facility assumes that price changes in real estate markets accurately reflect people's attitudes to the imposed risk. A similar example of ex ante compensation is the payment of higher wages for riskier employment. The assumption is that workers may knowingly accept higher risks in return for a higher wage, but obviously a number of factors call this assumption into question. First, although in some industries such as logging the riskiest jobs are the highest paid, this might not be risk compensation because these jobs are also the most skilled; and in many industries jobs with higher risk are paid less than jobs with lower risk. Secondly, the information available about individuals' tendencies to misjudge risks suggests that workers may be no better able than anyone else to make a rational informed decision of how to trade off risks against income.

The two difficulties associated with ex ante compensation are that the appropriate compensation levels are hard to determine – markets may not do it, and with non-market schemes the affected individuals have an incentive to overstate their claims – and that blanket compensation schemes cannot adequately reflect individual differences in required compensation. Some members or officials of a community may in fact prefer to see a risky facility built for economic or employment reasons while others perceive the facility as all risks and no benefits. But attempting to find the fair level of compensation is certainly preferable to letting an imposed risk go uncompensated.

Insurance for losses suffered from the imposed risks can take the form of compulsory liability insurance held by the person or company carrying out the risky activity, or insurance by the government. Historically, it has often happened that insurance was not agreed on in advance, but the government has stepped in with compensation after a disaster. This has been the case both with technological hazards and natural ones. The main problem with insurance for imposed risks is determining the appropriate level of coverage, particularly since, if losses occur, very high liability payments may be determined by jury verdicts. Whatever level is chosen, though, equitable distribution of risks would be assisted if the nature and size of compensation or insurance schemes were publicly established at the time that the risk is first imposed.

It has also been suggested that the expectation that disaster relief will be provided, combined with people's mis-estimation of risks, leads too many people to choose to put themselves in risky situations, e.g., moving in to live behind dikes in flood plains (and then pressing for more dikes – and more compensation when they prove insufficient).

It may be that the best government response to a matter of public risk is regulation or information. If the consumption of a product carries risks not easily assessed by the consumer, perhaps a government program informing them of the magnitude of risk will allow them to make better decisions. But if obtaining the necessary information is too difficult for consumers, regula-

tion may be required. Such regulation could take the form of required standards of product safety, licensing of certain professionals such as physicians, or the restriction or banning of the sale of a product.

Regulation can also encourage equity of risk distribution by exploiting different sensitivities to risk. Uranium miners suffer a high risk of lung cancer, but the cancers are very slow in developing (with a latency period of twenty to thirty years), and the risks are vastly greater for smokers. These risks might thus be borne most fairly if only non-smokers over fifty years of age were allowed to work in uranium mines – but would such discrimination be acceptable?

When the government regulates the availability of goods or services on the basis of risk, it enters an area of strong conflict between different groups in society. People differ greatly in the extent to which they wish to take responsibility for the risk consequences of their decisions. Consequently in many areas there is vigorous conflict between those who wish to have a product or service available because in their view its benefits outweigh its risks, and those who wish the government to protect them by ensuring that no product with significant risk is available in the open market. Perhaps the clearest examples of these conflicts are in health care and drugs. Consider the conflict over the licensing of non-medical healers such as acupuncturists or homeopaths. Some people argue that prohibiting such services deprives them of access to their treatment of choice, while others claim that licensing such services would expose the uninformed public to dangerous quacks. There is currently a similar controversy over the proposed licensing of the new drug Depo-Provera as an oral contraceptive.

Since virtually no commodity can be consumed without some risk, a legal system that allows people to sue for harm caused by products raises similar difficulties and illustrates the same conflict between those who wish to choose for themselves and those who wish to be taken care of. The recent withdrawal from sale of the Copper 7 IUD in the United States illustrates this conflict. Although the Copper 7 was widely regarded as the safest of the IUDs, its manufacturer faced large numbers of personal injury lawsuits – perhaps because of the publicity generated by the claims against the allegedly badly designed and excessively dangerous Dalkon Shield. But the withdrawal of the Copper 7 means that virtually no IUDs are available to American women.

The American legal system does generate some remarkable ironies on issues of liability for public risk. Contrast the following reports on recent judgments: a manufacturer of football helmets was ordered to pay $12 million to a high school player paralysed in a game because the helmet did not carry a label warning that it was dangerous to ram opponents with it; while a Philadelphia Court of Appeal ruled that the Surgeon General's warning on cigarette packages absolved cigarette manufacturers of responsibility for damages due to smoking-induced cancers, despite the enormous

advertising campaign mounted by the manufacturers to persuade people to smoke.

While the Canadian public and courts have been much more restrained, there is growing evidence that Canadians are being influenced by the torrent of large product liability and malpractice suits they read about in the United States. The recent and well-known Brampton case is illustrative. While the wish somehow to compensate someone who has suffered grievous injury is natural, there are two associated questions that are exceedingly difficult, both in the legal setting and in the making of public policy: what measure of responsibility falls on people for the consequences of their own actions? And if no product or activity can be perfectly safe, how do we react when an apparently rare unfortunate event does occur? By saying that it is unfortunate that we have observed such an uncommon accident? Or by saying that the occurrence of an accident is sufficient evidence that someone has not been careful enough? Is there a line that can be drawn between negligence, incompetence or crime on the one hand, and simple bad luck on the other?

On the part of the public, what is required is acknowledgment that perfect safety is not attainable, and a lot of the responsibility for each person's safety must necessarily fall on his or her own shoulders. Clearly there is a right to be informed of the risks inherent in what we do or consume to the extent they are known at all, and to expect honesty and competence from those we deal with in the market and the government. But risks and bad luck do exist, and we do not have the right to demand that we always be lucky. If such an attitude of responsibility were more widespread, it would likely be less dangerous for a public servant to admit to taking risks with the public. Decisions regarding risk would not have to be made in such an environment of secrecy, and perhaps there would be increased opportunity for responsible informed public input into collective decisions on matters of risk.

For the public servant, what advice can we offer? Clearly a major part of the message is that you do take risks with the public and you cannot avoid doing so. Nothing you can do will permit zero risk, or even the finding of an incontestable best choice on any matter of risk. But a formal systematic analysis of the magnitude of risks, using estimated numerical probabilities and consequences, can help you clarify just what risks you are working with, and help you make the best decision under the circumstances of incomplete information, distributional inequities, conflicting agendas, and time pressure that you have to endure. Programs of compensation and insurance, or regulation and information, can help mitigate unequal risks that must be imposed, and can help people take responsibility for their own choices of risks. Finally, an understanding of the systematic departures from rationality that affect people's judgments of risk can help you anticipate what kinds of public reactions your decisions will create, and can remind

you of the paramount importance of presenting issues of risk to the public as transparently as possible, so that their judgments of risks will be less subject to misperceptions and bias.

Of course, the big decisions will still rest not with numbers, but with the political process. The responsibility of the public servant is to offer analysis, not simply respond to perceptions. The pollster, as a more distant observer, perhaps has a responsibility only to interpret images. The inevitable tension between the images and the analysis can ultimately be resolved only by the politician. And in accounting for the exercise of that responsibility, neither "the numbers made me do it" nor "the people have spoken" can suffice as an excuse. With risk decisions, as with others, direct accountability to the people carries a responsibility for leadership based on experience, intuition, judgment, and, finally, personal conviction and articulated principle.

The responsibility of the senior official thus could be summed up as reconciling what the analyst sees as the public interest with what the constituency office feels as public pressure. This requires framing decision problems as clearly as possible, and taking seriously the educational role of the public servant. It will often require programs of information and market regulation to support a market environment in which people can express well-informed preferences and find their most rational choices. But in the final analysis, your responsibility as a public servant is to base your decisions and advice on the normative, scientific analysis of the public interest, not on the public opinion polls.

Eike-Henner W. Kluge

What is a human life worth?

Pity the poor public servant. His lot is not a happy one. In a manner of speaking, he is the embodiment of society's attempt to fulfil its various obligations to its citizens, both as individuals and as a group. As such, his mandate is to advance the public good. If he were left alone to do his job, it would soon be done. Material investigations would elucidate for him the nature and extent of a particular problem; policy directives would identify

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the ends to be achieved; and a whole host of precise calculative methods would be at hand to specify the precise nature of his action: cost/benefit analysis, cost/effectiveness analysis, risk/benefit considerations, to mention but a few.

However, he is not left alone. Various currents and directives from diverse social and administrative quarters intervene. This, of course, is not surprising, since the society whose good he is to advance is not an individual person, an entity in its own right, fundamental and basic, that defines its own goals and looks to their realization. Instead, it is derivative, more like a mosaic or functional whole that derives its nature and existence from the totality of members that make it up. Each of these latter has his own wishes and expectations, feelings and preferences, desires and aspirations. Furthermore, a society does not exist for its own sake. It has its functional basis in the pedestrian fact that human beings find it easier to achieve their respective goals cooperatively, through combined interaction rather than singly and on their own. The mechanics of social interaction, however, require that some bar be placed on what otherwise would be complete freedom of action on the part of the individual. In return for acceding to this limitation of his freedom, the individual expects certain rights from society, and the satisfaction of those goals and needs that are central to his value system. As a result, each individual in society – and each group of individuals that is of like mind – feels an entitlement to express his position on what he considers matters of importance, and to see his values reflected in social policy, whether that involves law, planning, or other directives.

Our society attempts to meet these expectations by espousing a democratic perspective, with the inevitable result that we have indicated. The public servant's actions are subject to a series of constraints that run from the legal through the political and practical to the ethical; constraints that must balance the individual against society, value against obligation, and obligation against right – all the while with an eye to what is materially feasible under the circumstances.

The difficulty of this balancing act is increased by what appears to be a fundamental and insoluble conflict between the canons of good decision-making on the one hand and the underlying ethics of our society as such. Good public decision-making, after all, as it is commonly understood, is essentially goal-directed and measures right and wrong in terms of how well (or ill) the relevant decision produces (or is likely to produce) the greatest amount of good for the greatest number of people. In short, it is utilitarian in the classical ethical sense. The ethics of our society, on the other hand, stands at the other end of the ethical spectrum. It is deontological in orientation. It finds its focus in the belief that the individual person is of ultimate and incommensurable value, that as such he is a centre of rights and obligations that belong to him solely because he is a person, and that any attempt to treat him like a calculable quantity – a thing – is anathema.

Given this, what is the public servant to do? How, realistically, can he achieve his mandate? All too often the requirements of "good" public decision-making stand in direct conflict with the tenets of social ethics because the advancement of the public good can be achieved only if individuals are in fact treated like calculable quantities. This is particularly obvious in situations that require risk-taking: for example, the transport of hazardous goods, the planning of economic and manufacturing scenarios, the formulation of disaster plans, and so on. How could these sorts of problems be resolved without the assignment of numerical values and quantitative manipulation?

With this as a general sketch of the problem facing the public servant, let us focus the issue by centring on the question, "What risk can a public servant ethically take with the public?" The pragmatically oriented, utilitarian perspective clearly suggests that it can be answered only as indicated: through an evaluation of the relevant risks and an optimal, outcome-maximizing calculative procedure. This, of course, requires the adoption of a calculative stance: the evaluation of material probabilities and the weighing of the various qualitative and quantitative parameters that here touch human life. Surely, therefore, the very essence of responsible risk-taking in the public sector is inseparable from the question, "What is a human life worth?" Otherwise, how could the factors relevant to this evaluation be made amenable to reasonable deliberation? Indeed, how otherwise could the public servant here fulfil his mandate as *public* servant? While privately he may applaud the ideals of the person-centred deontological outlook, *as public servant* he must adopt a utilitarian perspective. The very nature of his profession leaves him no choice.

Some problems

This defence of utilitarianism as an ethics for public sector decision-making has something very appealing about it. Not only does it appear eminently reasonable, as we have indicated, it is also in keeping with actual practice. Furthermore, it holds out the promise of a quantitative rationalization of all public sector decision procedures according to a simple ethical theory that could be applied across the board – a feature of immense appeal to the pragmatically oriented.

However, while it is appealing, it is also ethically unacceptable in the end. There are several reasons for this. To begin with, how is the value of a human life to be determined? There is no scale of absolute evaluation with sufficient cogency to allow the public servant to appeal to it. Statistical investigations into what people believe about the value – the numerical value – of human life would therefore be required. But whom to ask? The population at large? While that would satisfy the democratic leanings of our traditions, it would allow only for as much certainty and stability as the speed of the next poll. No public action with future implications could reasonably be

undertaken on such a basis. Is the opinion of those in political power telling? Nuremberg, Manchuria and similar occurrences have shown that ill-advised. Those economically at the helm? Similar remarks apply – as witness Bhopal and similar disasters. Nor do religious or cultural perspectives fare any better. The matter threatens to become an administrative nightmare.

But assume it solved. There remains another difficulty: Are we dealing with human life as such, or life of a particular sort? The reflective public servant will here be struck by the realization that any attempt to define the framework of legitimate risk-taking from a calculative, utilitarian perspective must consider not only the risks to the fact of life – to sheer quantity – but also to quality of life, to its nature. It would be a naive public servant indeed who congratulated himself on a decision that would maximize the number of survivors of a particular disaster while allowing a quality of life that would be painful, nasty, brutish and in general dehumanizing in the extreme. Nuclear survival scenarios are the most obvious – and most obviously unacceptable – examples of such a perspective.

How to balance quantity over quality? Once more, let us assume the problem solved. Would it then allow the public servant to proceed in a calculative fashion? It would not. Public risk-taking does not always, or even frequently, centre around human versus human life. Not even qualitatively. Frequently it pits socio-economic against human considerations. It is this that lies behind "acceptable losses," "reasonable risk factors," "cost/benefit quotients" and the like. But how, realistically, are such calculations to be effected? It requires calculations of future human values, not merely present ones; and represents an equating of the individual with consumptive and productive capabilities only. Even from a utilitarian perspective that is simplistic, like equating apples and aardvarks.

Finally, there is this to consider: Would an answer to the question of value provide an answer to the question of right? Values, after all, are action potentials. They give direction and impetus to an act. The question of right, however, belongs to an entirely different framework, distinct from that of value. Nor can it be identified with what is legally allowable. The judgment at Nuremberg is clear on that score. The question of right, ultimately, is the question of what is ethically legitimate. Therefore even if the public servant had an answer to the question of how much a human being was worth, could integrate that value with considerations of non-human value and arrive at a proper calculation, he would still not have answered the question, What risks is it right to take?

The public servant as proxy decision-maker

The upshot of our considerations, clearly, is that contrary to first appearances, the question, "What risks is it ethical to take with the public?"

cannot be answered in terms of the question, "What is the value of a human life?" The focus on value itself is mistaken. Instead of value, it should be on rights. Here it may be useful to recall the justification for the role of the public servant. It lies in the pragmatic security of centralized administration and decision-making that is an ineluctable aspect of sophisticated civilization. In such a setting the individual person cannot, realistically, begin to exercise his autonomy and right to self-determination in all matters that affect him. Furthermore, the pursuit of commonly shared goals may involve a conflict between individual rights in their various parameters and of those of the individual against the common front of others. The function of the public servant is here to integrate and steer an acceptable course pursuant to rights when the individuals – or the group – cannot realistically do so themselves.

In short, the function of the public servant is not to make decisions in terms of his own values, but to act as administrator of rights: as proxy decision-maker, as it were. Not, to be sure, because either public or the individual as such is incompetent, but as a matter of pragmatic social necessity.

This, however, has important implications for how the public servant must execute his mandate, particularly when the prospective course of action involves risk. Whenever the matter is of sufficient gravity that the reasonable and prudent person would want to be consulted, and insofar as is possible in keeping with the nature of the situation, the ethical public servant must attempt to involve the public by way of informed consent: by facilitating public awareness and engaging in consultation. Of course there are limits, even here. The very nature of social existence and the daily conduct of public business entail that such a process neither need nor should be pushed to the extreme. The reasonable person's perspective in other areas of professional involvement – for example, in the health care sector – can here serve as an initial but useful guide. One thing, however, will be clear. Uninformed risk may be undertaken only under exceptional circumstances, when time is of the essence or the divulgence of the risk itself would produce harm. In other words, only on the basis of a public service analogue of the doctrines of emergency and therapeutic privilege familiar from and entrenched in the medical setting. Not that the public servant is a health care professional. He is, however, an individual in a position of delegated trust. It is the fact of trust – of a fiduciary relationship – that entails these consequences. That is also why, when the exceptive clauses do come into force, an ethics that respects the citizen as person requires that the decision be made on the basis of criteria acceptable to the objective reasonable person and under the aegis of right.

The last in particular is important. Considerations of the public good may be advanced only insofar as that good encompasses respect for the individual, and is not a matter of aggregative value but focuses on the functional interplay of rights. A "let justice be done though the heavens fall!" ap-

proach may be a bit extreme and legalistic, but if justice is determined through a balancing of rights, the sentiment is correct.

For – and herewith we meet the appeal of the utilitarian approach head-on – it is unnecessary to adopt this outlook (and thereby contradict our social ethics) simply in order to achieve calculative convenience. The calculative needs of rational decision-making can be met without placing a value on human beings or attempting to quantify rights. All we have to do is realize that rights can be ranked and balanced with respect to one another. In fact, there are three ways in which this can be achieved: logically, naturally and voluntarily. *Logically*, if a certain right can be exercised only when a particular condition is satisfied, then the existence of the right in question presupposes the right to bring about that condition, and the latter is logically prior to and more fundamental than the former. This has clear implications for risk-taking involving, say, a conflict between quality of life and life itself. All other things being equal, decisions that maximize the quality of life of a population at the expense of the life of some of its members are ethically unacceptable even though the number of lives involved be small. Considerations of "acceptable losses," therefore, when interpreted in this fashion, must be rejected as violating a fundamental right.

Likewise, *naturally*, all other things being equal, those rights that arise out of the nature of a situation rank higher than and take precedence over rights that are grounded in voluntary agreement. This becomes relevant, say, when evaluating the pros and cons of optional programs having cultural or other such significance against the danger that lack of funding would impose for the continued existence of an individual (or group of individuals) as socially identifiable entities. Native programs would here be implicated as would resource allocations involving elective as against preventive medical procedures.

Finally, and this spells out the exceptive clause above, rights can be ranked *voluntarily*. All members of society have the right to re-order and re-rank their otherwise established and effective rights. This follows from the Principle of Autonomy, the most basic principle of deontological ethics, and the nature of rights themselves. A right, after all, is a claim that an individual has upon another person. He may exercise that claim if he wishes, but he need not do so. In this it differs from a duty, which is something he owes another person and which he must do when called upon or when its enabling conditions are met. A right he may exercise: with a duty, he has no choice. The very fact of choice therefore – of autonomous decision – is built into the very notion of a right. The Principle of Autonomy is simply a fundamental recognition of this feature in the logic of the ethical framework itself. Each person, therefore, so long as he is competent, has the right to decide which of his rights he wishes to exercise – or indeed whether he wishes to exercise them at all.

The implications of this for public sector decision-making are clear. For example, each individual has the right to give up his right to life in order to allow a better quality of life for others; to run a risk to his life or the quality of his life for the benefit of others, or even for himself. But equally as clearly – and this is crucial – the fact that the individual is willing to do so cannot be determined for him by someone else. Least of all by the public servant who does not know him. It can be established only by direct inquiry and consultation with the affected party.

It is here, however, that rights and values interface: the values to provide the direction in which individual autonomy will be exercised; the rights to determine the justification for and framework within which all this occurs. That is to say, it is patently obvious that the public servant, faced with the necessity of public risk-taking, cannot always inquire of each individual as to his values and the voluntary re-ordering of his rights. Especially not when time is of the essence. The public servant must here project. That is to say, he must elicit and employ the values of the affected person or group of persons in order to determine whether and in what direction he/they would exercise the relevant rights. In short the public servant must here function as proxy decision-maker. Calculation of a sort will here be possible – and indeed necessary. We must emphasize, however, that these calculations will not proceed *via* utility, nor will the values involved be material values that are assigned to persons as commodities or things. They will be values held by the individual persons – in the language of psychology, action-potentials that determine in which direction they would exercise their rights. These values, of course, may change over time. The conscientious public servant will be alive to that fact. Opinion research, therefore, has an important role to play in the formulation of decision-making guidelines. Nor is this a shortcoming. Rather, it is an inevitable result of the fact that each person, as an autonomous agent, has the right to change his mind.

Conclusion

What risk is it ethical to take with the public? The utilitarian perspective that would answer this by assigning a value to human life must yield to the deontological perspective of our social ethics. A public servant's decision to run a risk, therefore, particularly an uninformed one, cannot be justified by saying that there are lives at stake and adding up their quantity; by saying that the quality of public life is threatened and calculating pragmatic returns. His solution, if it is to be ethically defensible, must come through a balancing of rights, focusing on priority and autonomy. Justice and equality will also be implicated. Recent developments in the health care field have shown how all this is possible. It remains to the public servant to adapt the developments there to the grander social scale.

Louise Piché

Employment equity: managing in a rights-seeking environment

Employment equity is a new term coined to meet an old need. The need is for justice – social and legal – and it has been expressed, in different forms, for centuries. It has campaigned for the extension of citizenship, property rights and the vote. It has called for the freedom to work for adults and the freedom not to work for children. It has been the power behind movements for equality before the law, for universal education, and for health care.

The need for justice has taken forms that have represented social evolution and have been given legal expression. I use the term "forms" deliberately because each acknowledged need has resulted in a change in the formal organization of society, in a new structural element that affects the ways we think about ourselves and about each other. As needs are recognized, the changes required to respect them must be made. The case is no different with employment equity. It responds to a social need that is even now in the process of finding legal expression and it demands change.

Change of this kind is always vigorously sought by some persons and groups and resisted by others. We need not look far to see examples; they are readily found in the labour movement, the civil rights movement, the women's movement. The advocates and the resisters may polarize discussion or debate on the merits of change and they may be, or become, inflexible. As long as this conflict is civilized, it is productive inasmuch as it calls attention to issues and stimulates their reasoned public discussion and private consideration. The relative strengths and weaknesses of these elements will bear on the prospects for change and the problems to be addressed in effecting it.

Viewed in this perspective, a rights-seeking environment is permanent. It seems safe to say that as long as human beings inhabit the globe, there will be wrongs to be redressed in the light of evolving perceptions of justice. The particular rights at issue and their formal expressions will differ. Important questions focus on the extent to which rights being sought are competitive or conflictual.

In the late 1960s and early 1970s, public discussion of what we now call employment equity was much more polarized than it is today. Since that

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time, the advocates have prevailed to the extent that, as a society, we see that employment equity is a matter of fairness. In that sense, change related to the principle involved has already taken place. Millions of women with families will tell you, however, that it has not taken root in relation to work in the kitchen. Thousands of women undergraduates are dissatisfied with its application to curricula in the schools. Women and human resource managers in public and private organizations know that it is not standard practice in the conventional workplace. Each of these groups of women, and other groups of individuals who face or risk discriminatory practices, is aware that very specific, concrete steps must be taken to alter the environments they inhabit if the principle of fairness is to be honoured and observed. Our concern is with change in the organizational environment.

Organizational change is not a natural force like tides or the weather. It requires, and yields to, management. The management of change, by definition, means going from one thing to something else. The traveller on this route must have a clear idea of his or her destination and an equally clear idea of his or her starting place. Managers charged with the implementation of employment equity programs work with different traditions, priorities and needs. Their organizations have different sizes, structures, compositions, capabilities and goals. Thus, the first task in the management of change in general, and particularly in the implementation of an employment equity program, is an analysis of the particular environment in which it is to occur.

At Canadian National, analysis in preparation for an employment equity program produced a profile of the company that identified opportunities and constraints. Further, it led to realistic and shared expectations for the program. CN employs sixty thousand people and runs businesses ranging from trucking to telephones to real estate. By far its largest component is the rail operation, which is overwhelmingly male, unionized, and blue collar. Operations are decentralized and interact with different geographic, economic, and social conditions in different sectors and parts of the country. These characteristics are all affected by the general economy, which is showing modest growth after a period of severe recession, and by industry-specific concerns, which at the moment call for downsizing and reorganization. CN is a mature company with a strong sense of tradition and a strong commitment to the public interest. It is also a crown corporation subject to certain political pressures, and part of a regulated industry with some rather complicated legal obligations. Last, but certainly not least, CN has been charged with sexual discrimination in its employment practices and was found guilty by a tribunal of the Canadian Human Rights Commission.

I think it is safe to say that this description is unique to Canadian National. No other company has exactly these qualities and each quality has implications for the design and prospects of an employment equity program. There are some obvious directions. The program must be decentraliz-

ed and, that being so, must rely heavily on communications strategies, both top down and bottom up. Diversification requires a program capable of polymorphic application. The need for reliable, up-to-date data is clear and so are the difficulties in getting it and the complexities of interpreting it.

This information has to be read against a larger backdrop. CN adopted a women's program in 1975. The company conducted information sessions and seminars and made conscientious efforts to act as an equal opportunity employer. Over the next ten years, some women made progress at Canadian National, but the statistical representation remained almost unchanged. Many other organizations had this kind of experience during the same period. It made us determined to obtain measurable results and to do so quickly. That meant that we had to confront the realities of competition in a rights-seeking environment and take careful stock of limited available resources.

Canadian National's status as a crown corporation, its record of service, and the negative press generated by the human rights case all favour the implementation of a dynamic equity initiative for women. The tradition of a male work force, the prevalence of blue-collar occupations, and the overriding preoccupations of CN unions do not.

We found paradoxes in the environment. CN's sense of tradition would, on the one hand, perpetuate a male work force and, on the other, embrace opportunities to ensure equality. Although CN employs a lot of people, the best "fits" between job openings for women and available labour may be in white-collar areas (for example, engineering), where the number of jobs as a proportion of the total is relatively small. There are contradictions, perhaps more apparent than real, in launching an employment program in a period of cutbacks.

Those are just the broad strokes. In detail, it becomes important to take account of lines of accountability, financial and other resources and, frankly, personalities. They are all parts of the environment and they play distinctive roles in determining the approach to use with a program and its chances for success.

An assessment of these factors yielded some interesting information along unconventional cost-benefit lines. While everyone favours employment equity in principle, some may favour it more than others. We took stock of support for the program in terms of who would pay and who would benefit. CN's shareholder, the government of Canada was repeatedly and unequivocally on record as a proponent of employment equity. CN's executive and board of directors emphatically wanted an employment equity program and they wanted it to succeed. Given the principle of the issue and the company's image with respect to it, their position had to be positive. CN managers, especially human resource managers, endorsed employment equity. For reasons of principle, public profile, and the positions taken by the corporation's executive and shareholder, a failure to implement employ-

ment equity initiatives would be perceived as bad management practice and reflect negatively on their professionalism.

These positions just make sense. Less was – and is – known about the members of employment equity's target groups: women, disabled persons, Canadian Natives, and members of visible minorities. The report of the Abella Commission tells us that, in general, these groups experience discrimination in the workplace. However, CN, like most Canadian corporations, did not keep statistics on the employment history of members of the target groups other than women, did not have quantifiable information about their experiences inside or outside CN, and knew little or nothing concrete about their aspirations or frustrations in relation to the company.

A fourth group is even less understood. It is composed of persons who may feel threatened by employment equity. We know almost nothing about these people. We can assume that, like most Canadians, they favour the principle. In practice, however, they may, for reasons ranging from insecurity to outright chauvinism, oppose its implementation.

The costs and benefits of the employment equity program depend upon such perspectives. CN management might see employment equity as initially disruptive and, given the previous women's program, difficult to implement effectively, however much they supported the principle and wished to contribute to its implementation. Evidently, "soft" support in line operations would require immediate and consistent attention.

Members of the target groups should benefit at no cost, the whole idea being that their costs of employment were already too high. We reasoned that those threatened by or opposed to employment equity would also benefit from a healthier work environment, either at no cost or at a much lower cost than they supposed. Alongside this analysis, we weighed the costs and benefits of *not* establishing an employment equity program. This exercise was short-circuited because we were persuaded that government would act to make employment equity mandatory, at least for crown corporations. So we were really looking at the costs and benefits of postponing such a program. From every point of view, we found high costs and no benefits.

We then turned to the development of specific techniques to be used at Canadian National. Communications are a vital part of our implementation strategy. Our communications strategies, like others we have used, have been tailored to our circumstances. Outside the company, we have attempted to counteract the negative and sometimes unfair publicity that surrounded the human rights case (*Action Travail des Femmes* v. *CN*), to gain credibility for CN's commitment to employment equity, and to assure our shareholders that we are both active and productive in relation to this issue.

Communications inside the company are more intense and more complex. They have been directed toward management groups, employment equity coordinators and to employees in general. Meetings with management groups were essential to set both immediate and long-term goals for

the program. These meetings dealt with the mechanisms and structures required to ensure neutrality in employment policies, practices, and programs, and served as vehicles to reach concrete identification of the instruments needed by the groups to carry out work force analysis, employment systems analysis, and work plans reflecting employment equity objectives. They revealed the importance of designated employment equity coordinators to establish lines of accountability and to maximize continuity.

Employment equity coordinators now represent each of the management groups – thirty-three in all. Each coordinator has attended workshops focusing on neutral processes and content. All of these meetings have been target-oriented, as the thrust of CN's program, from the beginning, has been toward measurable results and, therefore, clearly defined goals.

Our program has, we think, exploited its advantages, one of which is momentum. This has given us news value and regular appearances in CN in-house publications. We have produced posters dealing with different aspects of the program and brochures outlining their features and objectives. Regular communications from the field permit us to monitor progress, review our work, both overall and in detail, respond to problems, and report to management. Several months into our program, for example, we found we needed a device to record initiatives which might or might not eventually bear fruit. We had not anticipated this need and, without clear communications channels, probably would have remained ignorant of it.

Corporate initiatives have been symbolically and materially important. The first was the adoption of the program and the assignment of a high profile for it. In the summer of 1985, CN offered sixty-eight scholarships to women registering in non-traditional training programs at post-secondary educational institutions in Canada. As well, CN provided paid leaves of absence for five women employees who had demonstrated potential and motivation and who wished to pursue advanced studies. These two initiatives were repeated in 1986. We have upgraded maternity benefits to CN employees according to different formulas, depending on whether they are unionized, non-unionized, or management. A pilot project for an on-site daycare facility in Montreal has been instituted.

The targets and goals mentioned above are a separate and important tool in the employment equity program at Canadian National and a measure of substantial progress. Short-term targets helped establish an upbeat, proactive perception of the program; long-term targets reflect a commitment to employment equity as "business as usual" from here on in.

Accordingly, we have taken a series of ad hoc measures to employ and promote women. CN is making deliberate efforts to recruit women by directing employment information in newspapers and educational publications, or concerning internal job postings, to their specific attention. In 1985, for example, 21 per cent of railway blue-collar hirings were women, 23 per cent

of the company's new engineers were women, and 40 per cent of hirings in management were women.

Short-term measures are backed up with three-year work plans which generate appropriate statistical information, scrutinize it for under-representation of women, outline remedial measures, and set goals for each group. These work plans take account of employment equity goals in relation to every group of positions at Canadian National. Special initiatives in training and development are expected to broaden opportunities for women.

We see signs of a turnaround in credibility. The federal government, groups concerned with employment equity and, importantly, women's organizations, have become interested in and supportive of our program. This development is encouraging for us.

The employment equity program needed some people in dedicated positions. Initially we were three and exclusively concerned with the women's program. Our responsibilities have expanded to include the other target groups contemplated by proposed legislation, the company's youth employment program, and human rights compliance. Integration has strengthened the numbers in the unit, and resulted in better coordination and net productivity gains.

Putting people in place has been a lot easier than making up for deficiencies or absence of data. External data on the available pool of women are approximate at best and an unreliable guide to appropriate representation. Nor are our internal employee data adequate with respect to women, the disabled, native people, and members of visible minorities. We have completed a study of data needs and begun a four-phase program to remedy this problem.

I hope you will have recognized an important feature of the techniques I have been describing. None exists in isolation, each is interdependent, all have been developed as measures to mutually support and enhance one another. Our work in communications supports and is supported by corporate initiatives. Each of these elements informs and validates the efforts and emphasis we have committed to targets and timetables. We need good data to be effective in each of these areas; conversely, prompt initiatives in these areas are important to our prospects of acquiring good data.

It is possible to describe these techniques separately but they do not work separately. It is possible, especially given our focus on goals, to suppose that these techniques produce a linear progression toward a fixed and orthodox end. In fact, progress is fragile and uneven, especially in a competitive, rights-seeking environment. It is a product of the techniques we have used but depends on factors formally external to the employment equity program and inherent in conditions prevailing at Canadian National.

The most obvious is downsizing. That circumstance creates uncertainty

for employees and propels many of them into survival modes that resist change. Further, it will force sensitive assessments of progress. Gains in the representation of women in blue-collar positions may disappear while those in management may accelerate. We may find ourselves with more women as a percentage of employees at the same time that women's representation in absolute numbers declines.

Such developments will call for modified or new techniques which, in turn, will derive from continued study of the nature and direction of Canadian National overall. That is the starting point, the framework and, finally, the arbiter of success.

Jule Morrow

Employment equity planning

In 1985 the federal government announced its employment equity initiatives in response to the report of the Royal Commission on Equality in Employment. And, although the legislation that followed (Bill C-62) affects only employers with "100 or more employees on or in connection with a federal work, undertaking or business," the implications for other employers and jurisdictions may be significant. In fact, we are already beginning to see some related public sector response within provincial jurisdictions. For example, in November 1985 Ontario published a Green Paper on Pay Equity, and will soon introduce legislation providing funds to raise the wages of women in the civil service to the level of their male counterparts. Similarly, pay equity legislation enacted in Manitoba will allocate 1 per cent of the civil service payroll over a four-year period to pay adjustments.

The gap between male and female wages in the public sector is only one reason why employment equity planning is becoming an important management tool for public sector managers. The need for occupational diversification becomes apparent when the statistical representation of women (and other disadvantaged groups) across job classifications and levels is examined. Generally speaking, the overall representation of women

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in senior management, technical, scientific, and non-traditional occupations within government has been minimal. Women continue to be overrepresented in clerical and secretarial jobs at the bottom end of the pay and benefit scale. Lack of advancement opportunities and a paucity of career development programs have also contributed to the current position of women in the public sector, which has been further exacerbated by systemic discrimination – the institutionalization of policies, programs, and legislation that act as barriers to equal opportunity and treatment. It is precisely to remedy the past inequities perpetuated through discriminatory practices and to provide opportunities for underrepresented groups that employment equity planning can be introduced.

Employment equity planning is unlikely to be successful in the absence of a strong executive commitment to its principles, implementation strategy, and outcomes. The executive commitment should be articulated in an overall policy statement and "broadcast" throughout the organization. In this way, advance notice is served that the organizational culture will be changing, that outmoded attitudes and systemic barriers will be eliminated, and that maximum use will be made of *all* human resources.

Employment equity as outlined in the Royal Commission report is comprised of:

a) a clear statement of executive support, the appointment of senior management accountable for implementing an employment equity program, the establishment of an implementation structure, the assignment of appropriate resources, and the development of a suitable labour-management consultative process.
b) the design and implementation of an organizational plan to include:
   i. the identification and removal of discriminatory barriers in a company's hiring, training, promotion, and income policies;
   ii. alternative, corrective systems;
   iii. special remedial measures designed to remove the effects of previous discrimination;
   iv. quantifiable goals with an appropriate monitoring and assessment system to ensure that women and minorities are equitably represented and remunerated at all levels within the organization.[1]

Obviously, such an undertaking must be implemented in an atmosphere of cooperation. Managers, employees, and the representative union(s) must accept the organizational commitment to specific employment equity actions. An educational rather than a coercive strategy will lead to an understanding of the importance of employment equity planning and is more likely to result in long-term positive change. Once a government department or program is committed to introducing a program of employment equity, the choice for methodology of implementation is broad. It

1 Royal Commission on Equality in Employment, *Report* (Ottawa: Department of Supply and Services Canada, 1985), pp. 193-94.

should, however, be tied in with an effective human resource management and career development strategy. An organization with poor or non-existent employee career development programs is not a good candidate for results-oriented, positive employment equity planning.

Whether implemented in an across-the-board fashion or through smaller pilot programs, employment equity may have the following components:

- non-sexist communications
- strong sexual harassment policies
- clearly articulated performance evaluation standards
- analysis of current statistical representation of target groups
- equitable recruitment and selection guidelines
- gender-balanced selection panels
- in-house training programs
- "bridging" positions between clerical and management job categories.

Clearly, employment equity planning in the public sector presents some difficult challenges. But the rewards, in terms of productivity, morale, and effective human resource utilization are great.

Bill Hanson

Special problems of Indian/ Native people

The fundamental cause of problems affecting many Indian/Native people is that they are being compelled not only to share an environment with a modern technological society, but also to be assimilated into it. In most programs there is little or no recognition given to the many differences which normally exist between an aboriginal race of people and the various ethnic groups originating from off-shore countries. Identification of these cultural and lifestyle differences is necessary if relationships within the socio-economic sector of our society are to improve significantly. Members of the aboriginal races have complex problems of adjustment primarily because many of them project the "ethos" of the hunter-gatherer.

Our immigration policies and our institutions serve best those people with horticultural, agricultural and/or industrial life experiences. Our immigra-

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tion laws effectively lock out the hunter-gatherer from off-shore, and our institutions have failed to recognize and respond to such a person within our midst. In terms of philosophical outlook, framed primarily by historical relationships with the natural environment, the aboriginal hunter-gatherer shares a particular holistic way of life with no others within our society.

Indian/Native people are presently attempting to respond to circumstances and opportunities within the major lifestyles which can be identified as hunting-gathering, horticultural, agricultural, and industrial. As a result of their involvement and attachment to these distinctly different lifestyles and activities, Indian/Native people display a marked heterogeneity in terms of personal identity, needs, aspirations, technical capabilities, and socio-cultural orientations. Indian/Native people within each of these lifestyles are encountering a different set of problems, opportunities, and circumstances. Our collective failure to recognize this heterogeneity creates the situation whereby we impose one strategy and one set of programs to bring all members of the aboriginal race into the dominant society. Statistics indicate that because we have failed to provide a viable alternative, many traditional Indian/Native people remain detached and beyond the scope of most employment equity and affirmative action or similar programs.

If the concept of employment equity is to be realistic and affirmative action programs worthy of support by public and private employers, it is imperative that we identify how these initiatives relate to the people within the two contrasting realities evident within many Indian/Native communities.

The most obvious reality is that which is being indiscriminately imposed by the agents and institutions of modern-day society. Within this reality, the dominant characteristics of its followers are the acceptance and promotion of the power-down concept of authority, the Calvinistic work ethic, individualistic pursuit of material wealth, internalization of support systems, and the adoption of the values and beliefs considered essential for socio-economic success within the dominant society.

The other reality is not easily identified in conventional terms, as it is embodied in the culture and personality of more traditional Indian/Native people. While they can no longer treat Mother Earth as a sanctuary, a larder, and a spiritual refuge, they have not been granted access to the appropriate resources or institutions which could facilitate their orderly progress as a people.

The required strategy for the industrial-oriented group within the Indian/Native people is essentially that which is presently being applied under the umbrella of Indian/Native programs. What is required to make this more effective is to recognize that industrial-oriented programs and services, including affirmative action programs, are of value only to those Indian/Native people who aspire to that particular lifestyle. In terms of programming, the special needs of Indian/Native people within this reality are similar to those of many off-shore ethnic groups as they attempt to integrate

into Canadian society. By the mere recognition that it is inappropriate and morally wrong to impose strategies, programs, and services upon the more traditional people, current developmental initiatives, including affirmative action programs, can be more precise and effective. Furthermore, the practice of using the acculturated Indian/Native people to impose the modern lifestyle and institutions upon the more traditional members of their people must also be questioned. This practice increases the conflicts within the aboriginal communities and creates problems for external agents who expect the acculturated Indian/Native person to speak for all indigenous socio-cultural groups.

The alternative strategy must involve innovative approaches which lessen the socio-cultural group's dependency on the structured wage economy, consumer society, and many existing formal institutions. Their need is for the opportunity to strengthen the social, cultural, and economic aspects of a subsistence way of life. The required strategy must take into account the band-like, neighbourhood-based, socio-cultural relationships, traditional organizational form, and the set of attitudes, beliefs, and values that have successfully guided their hunting-gathering ancestors for thousands of years.

Our failure to recognize the traditional Indian/Native people and their continuing attachment to essential aspects of their subsistence way of life is seen by many as a serious breach of the intent of the Canadian constitution, human rights legislation, and most affirmative action initiatives. For many, the starting point for their future development must be the formal recognition by legislation that their subsistence way of life is legitimate and capable of coexistence with the dominant industrial-oriented lifestyle.

Douglas J. Wilson

Disability and employment: a guide for managers in the public sector

This brief note is directed to managers who may be in contact with persons with physical or mental disabilities either as job applicants or employees. The main areas I want to discuss are the employer's rights and respon-

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sibilities with respect to such persons. The guiding principle here is individual assessment. That is to say, persons should be evaluated on their ability to perform the essential components of the job. Adherence to the following guidelines may help employers to ensure that they evaluate on the basis of ability:

1. Avoid impressionistic assessments. This means not making generalizations about disabilities or stereotyping.
2. Assess persons as individuals. Look at job applicants and employees not as members of a group but as individuals.
3. Define specific employment needs according to business priorities. Employers should be clear what jobs need to be done and what qualifications the person doing the jobs must have.
4. State clearly the essential components of the job. What duties are truly required for a particular job?
5. Establish reasonable standards for evaluating job performance. Employers should be certain their evaluation procedures are reasonable in the light of duties performed.

I should add that an employer may refuse to hire a person whose disability prevents him or her from carrying out the essential components of the job. But if an employer does not hire a person because of a disability, that employer may be required under the prevailing human rights legislation to prove that the job requirements were reasonable and that the decision was not founded upon misperceptions or stereotyping of persons with disabilities.

Employers who hire persons with disabilities may find some modification to the job or facilities is required. We call this "reasonable accommodation." Such accommodation may include reassigning non-essential work duties, initiating flexible work schedules, making physical alterations to facilities, training, and acquiring technical aids. There are twenty thousand aids now available to assist individuals with disabilities working in previously unattainable jobs. Acquiring technical aids and making alterations to the workplace may be subsidized by provincial or federal programs, and may involve little or no expense for the employer.

Employers may want to know about a person's medical condition. We recommend that all medical inquiries be aimed at determining whether the applicant can successfully carry out the essential components of the job.

There is a growing body of evidence that employees with disabilities are as good or better than average employees with respect to safety, job performance, attendance, and turnover. The most comprehensive study was done by the DuPont Corporation in the United States in 1982. They found that 96 per cent of their physically disabled employees had average or better than average safety records on and off the job and 84 per cent of their disabled employees were rated average or better than average in regard to job performance.

Human rights legislation exists not only to protect those persons who, because of a group characteristic, are subject to discrimination but also to educate employers about the positive aspects of non-discriminatory employment. Allow me to stress the point that the single most significant aspect of such legislation is that it forces employers to concentrate on an individual's capabilities to do the essential components of a job. This can only result in a better match of employees to jobs and, subsequently, greater productivity.

William A. Gray

Formalized mentoring

Simply ensuring that women and minorities are employed in professional occupations in numbers representative of their proportion in the population at large does not mean that they will succeed in such occupations or gain promotion. If they do not know how to work within the system or how to link up with people who can help them understand it, their performance will frequently not meet expectations and disillusionment will lead them to quit their jobs in defeat.

To make sure that women and minorities, after gaining access to good jobs, will succeed at them, an intentional, systematic, affirmative action program is needed. One of the best involves formalized mentoring – a process whereby more experienced people help less experienced people in a variety of ways. General Electric, GTE, Hewlett-Packard, Johnson and Johnson, Kodak, Proctor and Gamble, and Xerox are some of the better-known companies which have established formalized mentor-protégé relationships between seasoned managers and new minority or female managers. The US Office of Personnel Management has a program where senior officials act as mentors for executive candidates in the Internal Revenue Service, the Science and Education Administration, the Fourth Federal Executive Development Program, and the Naval Air Systems Command. Canadian organizations and governments can learn from these formalized mentoring programs.

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One of the most important things mentors do is to help protégés understand and appreciate an organization's culture and folkways – its customs and values, its patterns of recognition, and its informal decision-making mechanisms. This removes the handicap of not being part of the "old boy" network and rapidly moves the protégé to the point where she or he can contribute to the organization.

Formalized mentoring entails helping protégés in various ways, such as teaching and coaching them to develop important competencies, motivating and sponsoring them to take on more challenging tasks or jobs, leading them to develop greater capability and responsibility, role-modelling how to play office politics in order to get their ideas accepted, guiding their career progress and counselling them and giving them feedback to improve their job performance. Under an informal mentoring system, the lucky individual may happen to find a mentor who fulfills some of these functions, but probably not all of them, and usually not in a very systematic manner.

The results of over four hundred studies in this area show that the key to successful informal and formal mentoring is the mentor-protégé relationship (MPR). A successful MPR will be highly sensitive and specific to the individual situation of the protégé. It is essential that the mentor's influence should gradually decrease as the protégé develops the competencies and self-confidence needed to perform better.

In my work on mentorship training I have developed a matrix of functions and roles to show how the mentor's influence in the relationship can progress along a continuum from being one of dominance to one of virtual withdrawal. The first phase of this process I have designated M (mentor dominant). The second phase of this Mp (protégé now participating in a subordinate role), and so on – through MP (joint participation), mP (mentor in a limited but supportive role) until the relationship reaches P (protégé operating independently). This kind of progression can be traced across a series of types of relationship, where the mentor acts, for example, as leader, as role model, as teacher, as supervisor, or as counsellor.

Perceptive mentors will encourage joint participation (characteristic of the MP phase) when protégés are ready for it, and sponsor them to take on more challenging assignments by giving initial support (at the mP level) until this is no longer needed (the P level). However, if mentors turn protégés loose too soon, they will likely flounder and waste important time learning by trial and error, and may lose their self-confidence.

Being trained to use this model in a dynamic fashion enables mentors to transmit the realities of the organization – its culture, goals, standards, and procedures – so that protégés understand and accept these things. Mentors will also try to foster each protégé's idealism so that this can be directed toward contributions to the organization in the form of new services, procedures, and solutions.

Protégé derives from the French verb *protégér* which means to protect. Informalized mentoring operates on the assumption that mentors, by virtue of their greater experience and expertise, will automatically be able to relate in an appropriately protective manner towards their protégés. This is not assumed in formalized mentoring programs. Nor can it be when protégés are women or minorities. Instead, a four-component program must be systematically implemented to ensure that mentors know how to provide appropriate types of help and protection and actually do this effectively.

In Component 1, mentors and protégés are carefully selected and matched for compatibility. Mentors must be "people-developers" who want to share their expertise; they should know the organization and the people in it, should be respected and should have some degree of power or influence. Mentors must want to learn how to relate to protégés in a dynamic way so that they do not remain too long in the dominant phase or, conversely, do not start by providing insufficient leadership.

Although, typically, protégés tend to be idealistic, they must be receptive and responsive to the realities that a mentor shares, and be willing to incorporate these into their value systems. Protégés should want to make a creative contribution to the organization as well as have a gradual influence on the evolution of new corporate values.

In Component 2, mentors are trained in essential human relations skills and taught to recognize and appreciate their protégé's characteristics and perspectives. Mentors and protégés must be taught how to avoid potential pitfalls, such as resentment and jealousies from peers who are not involved in a mentoring relationship, gossip about real or imagined romantic entanglements (like that between William Agee and Mary Cunningham at Bendix Corporation), clashes between the realities being transmitted by the mentor and the ideals that inexperienced protégés inevitably bring with them into any new job, and the fear that a very capable protégé might one day be a threat to the mentor's own job or prospects for advancement.

During Component 3, the mentoring process must be monitored to ensure that competencies learned during the training are actually being used correctly. This requires periodic supervision by trained staff, who provide feedback and additional training as necessary.

Component 4 occurs after the mentor has helped a protégé to complete a project and produce a tangible end-product reflecting what was done and learned through the mentoring process. The end-product might be a report, or the solution to a problem or a new service. Benefits and recommendations identified through a questionnaire and interview can yield useful quantitative and qualitative information for improving Components, 1, 2, and 3 in the future.

Kenneth Kernaghan

Political rights and political neutrality: finding the balance point

The search continues for the most appropriate balance between the political rights and the political neutrality of public servants. Historically, the evolution of political rights for public servants has been closely intertwined with the evolution of the constitutional convention that the public service is politically neutral. In recent years, the enduring tension between political rights and political neutrality for public servants has been heightened, especially as a result of court cases in which the appropriate extent of political rights has been at issue. The underlying theme of this paper is that measures to extend the political rights of public servants should take careful account of possible adverse effects on the political neutrality of the public service.

The two broad questions discussed in this paper are how far public servants can go in the exercise of political rights and how far they should be permitted to go. Reference is made to provincial and municipal experience but the major focus is on the federal sphere of government, where most of the recent controversy on political partisanship has arisen. Moreover, the federal regime on political partisanship is a useful model for analysis because it is more permissive than that of some provinces and more restrictive than that of others.

The paper begins by explaining the meaning of the terms political rights and political neutrality. This is followed by an examination of the arguments for and against political partisanship by public servants; an account of political partisanship in certain western democratic states and in Canada's provinces; and a brief discussion of the issue of public comment.

The meaning and scope of political rights

The term *political rights* includes the rights to participate in political activity (also commonly referred to as political partisanship) and to engage in public comment. *Political activity* encompasses the rights to vote in any election; to seek election to public office; to be a member of a political party

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or organization; to hold an office in a political party or organization; to attend political meetings, rallies and conventions; to speak in support of or in opposition to a particular candidate at political meetings, rallies or conventions; to serve as a delegate or alternate to a political party convention; and to campaign for or against a political party or candidate by such means as making a financial contribution, soliciting financial or other contributions, canvassing door-to-door, working at the polls in a partisan capacity, transporting voters to the polls on behalf of a political party or candidate, distributing campaign material, wearing political badges, and displaying lawn signs.

The right to engage in *public comment* is the right to speak in public on matters of political controversy or on issues of government policy or administration. Political partisanship and public comment are related, in that public servants who participate actively in partisan politics, especially if they seek election, are usually obliged to express publicly their personal views or their party's views on government policies and programs. Public servants who are not permitted to campaign openly to support political candidates or parties must refrain from criticizing government policies or administration in a partisan way. It is of course possible for public servants to support political candidates in a variety of ways other than engaging in public comment (e.g., through contributions to party funds or to the internal operations of the party). It is possible also under certain circumstances for public servants who have no partisan affiliation or motivation to speak out publicly against government policies or programs to which they are opposed on non-partisan grounds.

The meaning and importance of political neutrality

An understanding of the concept and practice of political neutrality is essential to the examination in this paper of political partisanship. Political neutrality is a doctrine (or convention) requiring that public servants not engage in activities which impair – or appear to impair – their ability to carry out their official duties in a politically impartial manner. The political neutrality of a public service can be assessed in terms of the extent to which its policies and practices differ from the major tenets of the *traditional* doctrine of political neutrality. These tenets are as follows:

1. Politics and policy are separated from administration so that politicians make policy decisions and public servants simply execute these decisions.
2. Public servants are appointed and promoted on the basis of merit rather than affiliation with or contributions to a political party.
3. Public servants do not engage in partisan political activity.

4. Public servants do not express publicly their views on government policy or administration.
5. Public servants provide advice to their ministers in private and in confidence and, in return, ministers protect the anonymity of public servants by publicly accepting responsibility for departmental actions.
6. Public servants execute policy decisions loyally irrespective of the philosophy and programs of the governing party and of their personal opinions; as a result, public servants enjoy security of tenure during good behaviour and satisfactory performance.[1]

It is notable that the tenets of the doctrine are interdependent; an alteration in one tenet can have an important effect on others. For example, a substantial increase in the political partisanship of public servants can affect the extent of political patronage or security of tenure. It is notable also that political neutrality is a constitutional convention; its interpretation and application have changed over the years.

Political partisanship

Experience in Canada and elsewhere shows that determining the best possible regime for the partisan political activity of public servants is a very complicated matter. The Special Committee on Personnel Management and the Merit Principle (the D'Avignon Committee) noted that the views of those who spoke to the committee about partisan political activity "ran the gamut" from those who "believed passionately in their right to unfettered involvement" to those who believed that "partisan activity by a public servant was sufficient to cast a shadow on the political neutrality of the entire public service."[2] However, there is little support for either unrestrained political partisanship or the complete prohibition of partisanship. For virtually all serious commentators on this matter, the issue is not the *existence* of limits on partisan political activity but the *extent* of the limits.

The appropriate extent of these limits may well be prescribed in the near future by the Supreme Court of Canada or by the Federal Court of Canada, or both. In March 1986, the Supreme Court heard an appeal against a decision of the Ontario Court of Appeal[3] which upheld the limitations on the political partisanship of public servants contained in the Ontario Public Service Act. Then, in April 1986, the Trial Division of the Federal Court heard

1 For elaboration on each of these tenets, see Kenneth Kernaghan, "Politics, Policy and Public Servants: Political Neutrality Revisited," CANADIAN PUBLIC ADMINISTRATION, 19, no. 3 (Fall 1976), pp. 432-56.

2 *Report* (Ottawa: Supply and Services, 1979), p. 175.

3 *Re Ontario Public Service Employees Union et al. and Attorney General For Ontario*, 31 O.R. (2d), p. 321.

argument in three cases,[4] which were considered together, in which the plaintiffs claimed that section 32 of the federal Public Service Employment Act (on political partisanship) is incompatible with section 2 of the Charter. Section 32 of the act provides that public servants, unless they are deputy ministers, may seek election to public office if the Public Service Commission believes that their usefulness to the public service would not be impaired by their candidacy. Public servants are not permitted to work for or against a candidate for election to a federal or provincial office or for or against a political party but they are permitted to attend political meetings and to make a financial contribution to a political candidate or political party. Section 2 of the Charter guarantees the fundamental freedoms of expression, peaceful assembly and association. The defendant (the Government of Canada) claimed that section 32 is compatible with section 1 of the Charter which provides that the guarantees to rights and freedoms in the Charter are subject to "such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society."

Thus, the issue is clearly drawn: can the limits on the political partisanship of public servants contained in Ontario and federal legislation be demonstrably justified to be reasonable limits in contemporary Canadian society? The courts' answer to this question will have important implications for rules on political partisanship in all spheres of Canadian government. Some of the major arguments for and against political partisanship which the courts must consider are examined below. These arguments provide a basis for judgment as to how far public servants should be permitted to go in the realm of political activity.

Arguments for limiting political partisanship

The arguments most often presented for limiting the political partisanship of public servants are as follows:

1. To preserve public trust in government, public servants must be – and must appear to be – politically impartial in the exercise of their powers in the development and implementation of public policy. Members of the public must be assured that political affiliation is not a consideration in any dealings they may have with public servants.

The essence of the argument here is that partisan politics should be separated from the administration of government policies and programs. In

4 *Bryan Osborne and the Queen (Treasury Board)*, Court File No. T-1226-84; *William James Miller and the Queen (Treasury Board)*, Court File No. T-1239-84; and *Randy Barnhart, Linda Campone, Michael Cassidy, Ken Clavette, and Heather Stevens and the Queen (Treasury Board and Public Service Commission)*, Court File No. T-1636-84. While this paper was in press, the Federal Court delivered its judgment in these three cases. In essence, the court ruled that section 32 is compatible with the Charter. See typescript copy of the Reasons for Judgment dated August 22, 1986.

practice, a very large number of public servants are unavoidably involved in politics in the broad sense of the authoritative allocation of scarce resources. This involvement takes the form of providing policy advice to political superiors and making discretionary decisions in policy implementation. Thus, in the normal course of conducting government business, politicians and public servants cannot easily separate politics from administration. This kind of political involvement is not, however, politics in the partisan sense. Partisan politics can more easily be separated from administration. Most governments provide for this separation through statutes or regulations, or both.

The general public now recognizes that Canadian public servants are involved in the political process by influencing and making government decisions. It has been argued, however, that the public has the right to be confident that the recommendations and decisions of public servants are not influenced by partisan political considerations. Much of the contact public servants have with members of the public is through employees at the middle and lower levels of the public service. Thus partisanship, even by public servants at the lower levels of the administrative hierarchy, can undermine public confidence in government. Political partisanship creates the impression and increases the probability that the decisions and recommendations of some public servants may be motivated by partisan considerations. The federal Task Force on Conflict of Interest concluded that

> In a democratic society it is desirable for all citizens to have a voice in the affairs of the State, and for as many as possible to play an active part in public life. Yet the public interest demands the maintenance of political impartiality in the public service and of confidence in that impartiality as an essential part of the structure of government in this country.[5]

2. Public servants must be – and must appear to be – impartial so as to retain the trust of their political superiors who are dependent on them for objective policy advice and effective policy implementation.

Public servants who participate actively in partisan politics become more visible both to the general public and to their political and administrative superiors. It is understandable that ministers, for example, should lose confidence in the ability or willingness of such public servants to serve the government well, especially if they support an opposition party. This problem would be exacerbated if there were a substantial increase in the partisan political activities of public servants. Ministers might be tempted to ensure that their public servants are pro-government if they are not going to be politically impartial. One way of achieving this objective would be the use of patronage appointments with their adverse effects on merit and efficiency.

3. Opposition parties must have trust in the political impartiality of

5 Task Force on Conflict of Interest, *Report – Ethical Conduct in the Public Sector* (Ottawa: Supply and Services, 1985), p. 46.

public servants so that there will not be a politically motivated turnover of public servants with a change of government.

Limiting the political partisanship of public servants helps to ensure their security of tenure. Public servants who engage in partisan political activity on behalf of the governing party give opposition parties cause for concern about the likelihood of their loyalty to a new governing party. Yet it was noted above that public servants who actively support an opposition party give rise to concern about their ability to serve loyally the existing government. Thus, public servants who participate actively in partisan political activities are less likely to enjoy security of tenure. Moreover, a new governing party might be inclined to replace with patronage appointees those public servants who actively supported the former government.

Security of tenure for public servants depends to a large extent on their ability and willingness to serve loyally and impartially whatever political party is in power. In both the federal and provincial spheres of government, recent changes of government have resulted in the dismissal of public servants who were – or were alleged to be – political appointees and their replacement with friends of the governing party. In the federal government, almost all of the dismissals and new appointments have involved agencies, boards and commissions rather than regular government departments whose employees are subject to section 32 of the Public Service Employment Act. High-profile political partisanship by public servants employed in operating departments would give ministers cause for concern about the loyalty of public servants known to support opposition political parties. There would be understandable pressure on ministers to ensure that the careers of pro-opposition public servants did not prosper.

4. The expansion of political partisanship may result in the re-emergence of the patronage system of hiring and promotion with a consequent decline in merit and in public service efficiency and effectiveness. Both the public and public servants must be assured that appointment and advancement in the service are based on merit rather than on party affiliation.

A primary and enduring reason for restricting the political activities of public servants is to minimize the practice of political patronage, which clashes with the merit principle and tends to reduce efficiency and effectiveness in government. There is danger that a significant expansion in political partisanship would stimulate a resurgence of political patronage. This threat has two dimensions.

First, as the political partisanship of public servants increases, there might be increasing resort to patronage appointments as a reward for party contributions and, consequently, a larger turnover of personnel with a change of government. Moreover, political patronage is sometimes accompanied by bureaucratic patronage, as public servants with partisan affiliations strive to please their political superiors (or themselves) by appointing and promoting persons who share their political views. Public servants who

entered government on the understanding that career advancement would be based on merit alone would find themselves in a more partisan working environment.

The general public has cause to be concerned about the relationship between partisan political activity and patronage appointments. Some of the witnesses before the D'Avignon Committee expressed concern that "the exercise of political rights by public servants breeds a perception of patronage" and that "the general public might perceive that employees working for a political party do so in the hope that they will be rewarded when and if it comes to power."[6] These witnesses also expressed concern that if such public servants as the postmaster, the airport manager, the customs officer or the park warden participated in partisan politics, "the whole public service might lose valuable respect."[7] In addition, the career prospects of other public servants in the community who aspired to these positions could be affected by their own involvement or the involvement of their administrative superiors in partisan political activity.

Secondly, the fact or appearance that appointment and advancement are linked to partisan affiliation might have a contagious effect. Patronage appointments to senior positions might tend to politicize other levels of the public service. Similarly, partisanship at the middle and lower levels of the hierarchy might tempt elected officials to appoint and promote public servants on partisan grounds.

Public service unions have good reason to resist political partisanship which might result in a greater number of patronage appointments, especially at the lower level of the public service. It is at this level where employees are most likely to be hurt, because if they lose their jobs to patronage appointees they are likely to have more difficulty finding other employment. Moreover, public servants who wish to rise to higher levels in the public service could damage their prospects by engaging in overt partisan political activity.

There is some evidence to suggest that public servants should be concerned about the effects of political partisanship on their working environment and on their career prospects. In a survey of eleven hundred federal public servants conducted for the Public Service Commission, 28.1 per cent of the respondents felt that allowing more political participation would increase conflicts and confrontation with the people they work with on a day-to-day basis; 52.8 per cent thought it would result in more problems between employees and management. Also noteworthy are the findings that 46.3 per cent of those surveyed believed that allowing more political participation would influence the career prospects of public servants and 65.6 per cent of

6 Special Committee on Personnel Management and the Merit Principle, *Working Paper* (Ottawa: November 1979), p. 33.

7 Ibid., p. 34.

these thought that the influence would be in the area of job promotion prospects.[8]

5. Public servants must be protected against financial or other forms of exploitation by political or administrative superiors who are affiliated with a specific political party or candidate. Public servants can both suffer and prosper unfairly from actively supporting a political party other than that to which their political superior belongs or with which an administrative superior is affiliated.

Public servants can resist pressures from political or administrative superiors to participate in certain partisan political activities if those activities are prohibited. The greater the range of activities in which public servants are permitted to engage, the more vulnerable they are to such pressures. The argument has been made in the American context that "the freer the employees are to engage in voluntary political activity, the greater is the possibility that they will be coerced into involuntary political activity."[9] Another matter that has been raised in the United States, but has not been widely discussed in Canada, is that increased political partisanship by public servants, most of whom belong to public service unions, could lead to political coercion by unions as well as by supervisors.

Arguments for permitting political partisanship

The major arguments for permitting partisan political activities by public servants are examined in turn below:

1. Public servants should enjoy the same rights as other citizens to freedom of expression and association in the sphere of partisan political activity.

This is the most important reason for permitting public servants to participate to the fullest possible extent in partisan political activities. There is no doubt that constraints on political partisanship do limit the freedom of public servants to express their views on political issues and to participate in partisan political functions and organizations. It is widely argued that public servants should be permitted to exercise these fundamental political rights unless there are compelling reasons for restrictions.

In this regard, a recent decision of the Nova Scotia Supreme Court is especially noteworthy.[10] In this case, Justice William J. Grant struck down sections 34(2) and (3) and 35(c) of the Civil Service Act of Nova Scotia on the

8 Carleton University, School of Journalism, *Report on Attitudes of Public Servants to Political Restrictions on the Public Service* (Ottawa: Carleton University School of Journalism, 1985).

9 John R. Bolton, *The Hatch Act: A Civil Libertarian Defense* (Washington, D.C.: American Enterprise Institute for Public Policy Research, 1976), p. 13.

10 *Frank Fraser and the Nova Scotia Government Employees Union (Applicants) and the Attorney General of Nova Scotia and the Civil Service Commission of the Province of Nova Scotia (Respondents)*, typed version of decision rendered on June 10, 1986.

grounds that the restrictions on political partisanship contained in those sections were incompatible with rights guaranteed by the Canadian Charter of Rights and Freedoms. He concluded that public servants in Nova Scotia should be permitted to take a leave of absence rather than being required to resign in order to stand for political office. Moreover, "the prohibition against contributing or paying money for party funds denies the applicants the right to pay membership fees to join a political party and infringes upon their freedom of association and peaceful assembly."[11] Compared to most other provinces, the Nova Scotian rules on political partisanship were very restrictive. According to Justice Grant, these restrictions could not be demonstrably justified to be reasonable limits in a free and democratic society.

2. Limits on the partisan political activities of public servants restrict the political rights of a significant percentage of the labour force.

In western democratic states, the public sector, very broadly defined as including all levels of government and all public enterprises (e.g., hospitals, universities), now makes up a substantial proportion of the total work force. In Canada, public employees in the federal, provincial and municipal spheres of government make up roughly 25 per cent of the labour force. It has been argued, therefore, that limits on the political partisanship of public sector employees restrict the right of an unduly large and increasing number of citizens. The severity of restrictions varies significantly from one government to another but it is clear that the political rights of the great majority of public employees in Canada are restricted to some extent.

3. Limits on the political activities of public servants restrict the activities of persons who tend to be more knowledgeable than the average citizen about political matters.

The argument here is that limits on the partisan political activities of public servants are undesirable because public servants are on average better informed, more civic-minded and perhaps more rational in their voting behaviour than other citizens. Public servants, notably at the senior levels of government, do tend to be well-educated and well-informed. Thus, despite the absence of empirical evidence on this matter, it seems reasonable to suggest that public servants are on average likely to be somewhat more knowledgeable about public affairs than other citizens.

4. A result of limits on the political activities of public servants is that some persons who have qualifications needed by the public service but who wish to be politically active will be unwilling to enter government service.

There may well have been some instances in which persons whose skills are in high demand but who wish to be particularly active in partisan politics have decided not to join the public service. Hard evidence is unavailable on the number of persons who do not enter government service

11 Ibid., p. 54.

because their political activities will be restricted. Indeed, even impressionistic evidence on this point is hard to obtain since few, if any, complaints have been reported in the press or elsewhere. Nevertheless, all other things being equal as between a public service job and a private sector job, persons wishing to participate in high-profile political activities may find the private sector more attractive.

Comparative perspectives

Scholars and practitioners of public policy and administration have learned to be very cautious about transplanting policies and practices from one country to another. It is essential to understand the unique historical, cultural, social and political settings within which a country's policies and practices have evolved before recommending their adoption or adaptation in other countries. Thus it is necessary to know the particular circumstances within which regulations on political activity have developed in various countries before assessing their applicability to the Canadian environment. It would, for example, be naive to suggest that the policies on political activity in France or Sweden, whose political and bureaucratic systems and cultures are vastly different from Canada's, be adopted in this country. Moreover, it is risky to draw firm conclusions based on a reading of the formal rules in other countries about how these rules work in practice.

Nevertheless, the approaches to the regulation of political activity in other democratic countries give a general indication of what other governments deem to be reasonable in the light of their unique political and bureaucratic environments. These various approaches provide a rough basis for a comparative analysis of the Canadian approach. Despite the absence of in-depth research on the actual workings of political activity rules in other countries, it is possible to assign an approximate position to each country on a continuum running from unrestrained political activity to complete prohibition of political activity. Compared to the formal regulations in other countries, the Canadian federal regulations fall roughly halfway along the continuum. Such countries as Sweden, France, Australia and Britain lie toward the unrestrained pole of the continuum, while such countries as the United States, Japan and Eire lie toward the other pole. In relation to provincial governments, the federal government occupies middle ground between such provinces as British Columbia, Alberta, Saskatchewan and Manitoba which incline toward the unrestrained end of the continuum and such provinces as Nova Scotia and Newfoundland which incline toward the restrained end. Regulations on political activities in other provinces (e.g., New Brunswick, Quebec, Ontario) are similar to the federal regulations.

In most provinces, public servants may take a leave of absence to seek election to public office unless the government believes that their usefulness to the public service would be impaired by such activity (for example, if

they hold senior policy-making positions or sensitive positions in such areas as regulation or personnel). In respect of other types of political activity (for example, attending political meetings, rallies and conventions or canvassing for a political candidate), there is considerable variation among the provinces. The rules on political partisanship in municipal governments are in general more restrictive than those in the federal and provincial spheres of government. This is understandable in the case of small to middle-sized municipalities where government employees tend to be more highly visible and better known to the public than those in larger municipalities. However, even in most large cities, the importance attached to political neutrality has led to stringent restraints on the political partisanship of civic employees.

Many of the advocates of an increase in the permissible political activities of public servants recommend that the federal government and certain provincial governments adopt a political activity regime based on the British model. The 1984 federal Task Force on Conflict of Interest, which conducted a comparative study of political activity in Canada and several other countries, including Britain, concluded that the existing arrangements under section 32 of the Public Service Employment Act should be preserved as an appropriate balance between individual freedom and political neutrality. However, the D'Avignon Committee, which reported five years earlier, concluded that "the manner in which the British system regulates this matter [of political activity] provides an appropriate framework for the Canadian public service."[12]

The British arrangement is a tiered system which places all employees into one of three categories in respect of political activity: the politically free group, the intermediate group and the politically restricted group. The British system is, on balance and on the basis of the formal rules, somewhat less restrictive than the Canadian system. It is noteworthy, however, that a relatively small number of British public servants participate actively in partisan politics. Among the explanations offered for this situation are the strong tradition in Britain of political neutrality for public servants, and concern about the potential adverse effects of partisan affiliation on career advancement.

The restrictions on the political activities of public servants are greater in the United States than in Canada. Federal public servants in the United States are, for example, prohibited from seeking election to national or state political office. The Civil Service Commission is charged with enforcing the regulations on political activity. Participation in prohibited political activities is punishable by removal from office or suspension without pay for at least thirty days.

The political activity regime in some countries is more restrictive and

12 *Report*, p. 172.

political partisanship is less prevalent than is apparent at first glance. Thus drawing "the grass is greener" conclusions from knowledge of only the formal rules on political rights in other jurisdictions should be scrupulously avoided. Solid evidence is required on the particular culture and circumstances in which the formal rules have been developed and on the manner in which these rules work in practice.

Conclusions

It is clear that the arguments for limiting the political partisanship of public servants are intimately linked to the desire to preserve the political neutrality of the public service. Over time some departures have in practice been made from the traditional requirements of political neutrality. Nevertheless, a politically neutral public service remains at the heart of the Canadian political system. Moreover, it is critical to emphasize again that the several requirements of the doctrine are interdependent, so that a significant change in one of them will affect the others. Thus, a substantial expansion in the political partisanship of public servants may erode the reality and appearance of a politically neutral public service by such means as increasing patronage appointments, expanding public comment by public servants, reducing public service anonymity, and diminishing job security.

It is notable that it is not only in the sphere of political activities that the rights of public servants are limited. For example, restrictions in the conflict of interest sphere on such activities as the use of public office for financial gain are generally recognized to be reasonable and necessary. As in the case of political partisanship, such restrictions are essential to public confidence in the impartiality and integrity of public servants.

As explained above, the rules on political partisanship in Canada's federal government are more permissive than some governments and more restrictive than others. For example, Canada occupies a middle position between the United States and Great Britain and is more restrictive than some Canadian provinces but less restrictive than others. The Canadian government, like governments in other democratic states, has adopted a compromise position between the two extreme poles of the political activity continuum by striving to reconcile the need for limits on political activities with the need for freedom of expression. Viewed in the light of the rationales for limiting and permitting political partisanship and of policies and practices in other governments, section 32 of the Public Service Employment Act places the existing federal regime about halfway along the continuum between unrestricted political activity and prohibited political activity. Any modifications in this regime should be based on a careful examination of their likely effects, especially on the actual and perceived political neutrality of the public service.

Public comment

As noted earlier, political partisanship and public comment are distinct but related categories of political rights. The rationales for limiting and permitting public comment by public servants are very similar to those explained above for political partisanship. The primary argument for limiting the right of public servants to comment publicly on government policies and administration is the need to preserve the political neutrality of the public service; the primary argument for permitting such comment is to enable public servants to enjoy the fullest possible measure of political rights.[13]

The issue of the permissible limits of public comment by public servants has not yet come before the highest courts of the land in a case involving the Charter of Rights and Freedoms. If it does, the arguments presented will be similar to those in cases involving political partisanship. On one side, it will be argued that restrictions on public comment by public servants are incompatible with the Charter's section 2 guarantee of freedom of expression. On the other side, it will be argued that existing limitations on public comment are compatible with section 1 of the Charter in that they can be demonstrably justified to be reasonable limits in a free and democratic society.

There has recently been an important Supreme Court decision in a pre-Charter case involving public criticism of government by a federal public servant named Neil Fraser. Mr. Fraser was an employee of the Department of National Revenue who criticized publicly the federal government's compulsory imposition of the metric system and then extended his criticism to the proposed Charter of Rights and Freedoms. Mr. Fraser's dismissal from the public service was upheld by an adjudicator of the Public Service Staff Relations Board who asserted that when a conflict occurs between the government's interest in a politically neutral public service and a public servant's interest in freedom of expression, "it may be incumbent upon the public servant to make a difficult choice . . . between the termination of the employment relationship and the continuation of the impugned activities that created the conflict."[14]

The Supreme Court, which upheld the adjudicator's decision, concluded that public servants had some freedom to criticize the government but this was not an absolute freedom.[15] The court may have foreshadowed its deci-

13 For an examination of the issue of public comment from Canadian and comparative perspectives, see Kenneth Kernaghan, *Ethical Conduct: Guidelines for Government Employees* (Toronto: Institute of Public Administration of Canada, 1975), pp. 35-40.

14 *Neil A. Fraser, Grievor,* v. *Treasury Board (Department of National Revenue, Taxation), Employer,* Public Service Staff Relations Board Decision, May 31, 1982, pp. 28-29.

15 Supreme Court of Canada, *Neil Fraser and Public Service Staff Relations Board,* typed copy of judgment rendered on December 10, 1985, p. 16.

sion if a public comment case should arise under the Charter when it observed that public servants may publicly criticize the government in certain circumstances. Such criticism would be appropriate, for example, if the government was "engaged in illegal acts, or if its policies jeopardized the life, health or safety of the public servants or others," or if the criticism did not affect either the ability of the public servant to perform his or her duties effectively or the public perception of that ability.[16] The court's observations seem to support the notion that public servants should be able to participate without reprisal in the practice known as whistle blowing – that is, the exposure by public servants of government wrongdoing involving illegal, wasteful or corrupt action.

The issue of the appropriate bounds of public comment by public servants under the Charter will likely come before the Supreme Court in the near future. Several governments have anticipated this development by assessing the extent to which their rules and practices regarding public comment are compatible with the Charter. For example, the federal government has done this as part of a package of possible changes in the Public Service Employment Act and the Ontario Law Reform Commission has reported to the government of Ontario on the extent to which Ontario's rules on public comment and political partisanship are compatible with the Charter. Thus, some governments may well take legislative action to modify and clarify their rules before the court speaks on this matter.

The extent of the political rights which public servants are permitted to exercise differs somewhat from one government to another in Canada. This difference reflects the disagreement among politicians, public servants, academics and others as to how far public servants should be permitted to go. Whatever decisions the courts and the legislatures make on this difficult and contentious matter, the perfect balance between political rights and political neutrality for public servants is likely to remain an elusive goal.

16 Ibid., p. 19.

Michael Cassidy

Political rights for public servants: a federal perspective (1)

The issue of political rights for public employees is one of those old political footballs that gets resurrected in political campaigns, then put on the back-burner once governments get re-elected to office. These rights are more restricted in Canada than in any other western democracy except the United States. Since 1984 some political momentum for change has begun to develop on the issue of political rights, including my efforts as MP for Ottawa Centre. For public service managers, however, the question of political rights is also becoming an issue because of action by the courts based on the 1982 Canadian Charter of Rights and Freedoms. The politicians notwithstanding, it is very likely that the courts will ultimately strike down current restrictions on political rights of public employees, leaving in their place a legislative vacuum with no legally binding rules. That will hopefully put the ball back in the politicians' court and force them to confront the issue that they have been trying to avoid.

Apart from setting a limit on the time a Parliament may sit between elections, the Canadian Charter of Rights and Freedoms is almost silent with respect to what one might call democratic rights. The principles of fair practice in democratic elections are not set out as fundamental rights. Nor is the right to participate in political activity specifically spelled out.

Article 2 of the Charter does establish the fundamental rights of freedom of expression and freedom of association. This is the basis for the case which the Ontario Public Service Employees Union (OPSEU) took before the Supreme Court of Canada in March 1986, and the case which I took before the Federal Court of Canada in April 1986 in conjunction with the Public Service Alliance and four Alliance members who are federal employees. Challenges to provincial legislation on political rights have also been launched in Newfoundland and Nova Scotia.

OPSEU's attempt to argue for political rights on the basis of the Charter was turned down by the Supreme Court because its case was initiated long before the Charter was proclaimed in 1982. In Nova Scotia, the court struck down the province's restrictions on political activity by its employees –

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which admittedly are more restrictive than Ottawa's – as a violation of the Charter. In the case in which I am involved, the Federal Court ruled that the federal restrictions on political rights do not violate the Charter, and we have launched an appeal.

In our case we argued that the relevant legislation (s. 32 of the Public Service Employment Act) violates Charter freedoms by restricting federal employees from all forms of political expression or association apart from making political contributions, voting and possibly standing for office. The rules are additionally so vague that even the federal Public Service Commission will not say whether or not it is acceptable for a federal employee to put up a political lawn sign.

Article 1 of the Charter makes fundamental rights subject to "such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society." The research in our case suggested very strongly that other free and democratic societies have not felt a need to restrict the political activity of their public employees the way we have in Canada. Moreover, judgments by the Supreme Court up to mid-1986 – particularly the Oakes decision – suggest that very few limits on Charter freedoms will be accepted as justified under Article 1. The onus of proving that restrictions on political rights are justified will rest on governments, and the courts will look for the least restriction possible to attain such a generally desirable goal as the neutrality of the public service.

Some progress has already been made as a result of the case which I launched in conjunction with the Public Service Alliance. Part of it was based on opposition to a set of guidelines on political activity that were widely circulated by the federal Public Service Commission in February of 1984. Federal employees were told that the law meant that they should not do or say anything "which could give rise to the perception that they may not be able to perform their duties as public servants in a politically impartial manner."

The Commission's guidelines did not indicate whose perception would count but they did frighten many federal employees from working in the 1984 campaign. Since these were restrictions on freedom of speech that were not "prescribed by law", the Federal Court in August of 1984 found that these guidelines do not have legal force. Unfortunately, its findings do not yet extend to disciplinary action taken within departments.

Government action on the issue of political rights has been close to glacial. Legislation to guarantee political rights was promised by the Liberals prior to the 1980 election but blocked by their backbenchers on the times that the issue was raised (by the NDP) in Parliament. The Conservatives promised action during the 1984 campaign – as did all major parties – but have proceeded to implement their promise at a snail's pace, while at the same time fighting against political rights in the courts. Only in Ontario is there evidence of real progress. As a result of the Liberal-NDP Accord, the

Ontario Law Reform Commission published a very substantial report in June 1986 on the issue of political rights, which is intended to serve as the basis for legislation. This report proposes granting broad political rights to all Ontario goverment employees except for deputy ministers and a small number of senior managers and policy advisers.

I have take a similiar approach in a private member's bill which I submitted to Parliament in October 1986. Apart from senior managers, this bill would essentially ensure to public employees the same political rights as people working outside government. No political activity would be permitted on the job or that associated one's government position with politics, however.

The mandarin's view

What sort of reforms should be made in the area of political rights? The answer to that question falls in two categories: what should public service managers do about political rights, and what legislative changes are required? Senior officials will have to recognize that the environment for political rights has changed as a result of the Charter and that the conventional mandarins' wisdom on this issue is going to have to change.

That conventional wisdom was enunciated as recently as the spring of 1984 in the report by the Honourable Mitchell Sharp and the Honourable Michael Starr on "Ethical Conduct in the Public Sector." Although their task force focused on the issue of conflict of interest, they suggest that "any activity of a nature which brings into question the professionalism of a public office holder would imply a conflict of interest situation" – that is, a kind of breach of trust. They recommended that federal employees "must not engage in partisan political activities which will jeopardize the political neutrality, both real and perceived, of the public service."

The federal Public Service Commission has taken a similar view. Responding to my appeal for political rights in July of 1984, Commissioner Trefflé Lacombe replied that in addition to the individual rights guaranteed under the Charter, "at least two other fundamental rights have to be taken into consideration in reviewing this issue . . . the right of any government to receive objective information and impartial advice based on professional expertise (and) the right of the Canadian public to be confident that their public servants deliver the government's services in a professional and impartial manner."

Of course, neither of these "rights" will be found in the Charter when it is used to test the present restrictions on political activity by public employees. Senior officials will have to accept that, however much they may prefer having a system based on no political activity by people in the public service, that system may not long withstand the Charter.

What should be done

For a start, I would urge senior officials not to over-react to the situation that is now emerging. Some provincial governments in western Canada have tolerated political activity by their employees for many years, with no obvious evidence of damage to their public service or to its neutrality. The effect of changing the rules regarding political rights for most public employees will be to remove the fear of reprisals for such innocuous forms of political activity as writing a letter to the editor, putting up a lawn sign or spending two or three evenings knocking on doors on behalf of a candidate.

To put matters into perspective, the public service has grown far beyond what it was when the mandarins used to hold sway. The federal government now has some 225,000 civil servants, and altogether more than half a million employees. If public corporations, provincial and municipal governments, and publicly funded services such as health and education are included, close to a quarter of the Canadian labour force works for governments.

Only a tiny fraction of that number of workers have senior management or policy-making responsibilities. The vast majority of public employees play no role in policy formation, have no contact with ministers, and carry out jobs very similar to their counterparts in the private sector. It isn't necessary to restrict their political rights to ensure that governments get impartial advice from their senior officials and policy staff.

Moreover, all the evidence indicates that public employees are not a violently radical (or conservative) political force and are certainly not monolithic in their politics. In fact, they tend to mirror the Canadian population as a whole. (Public employees in the National Capital region, for example, helped elect five Conservatives, three Liberals and one New Democrat in the 1984 election – not far off the national split between the three parties.) Granting greater political rights to public employees is unlikely to make a major change in the strength of the major parties.

Public service unions have been consistent in recent years in demanding broader political rights. In a 1983 poll for the National Union of Provincial Government Employees, 72 per cent of the NUPGE members polled thought they should have the same rights as the general public. This was the same proportion as in the public at large, according to the poll. But even though most public employees indicate they want political rights, the number who will use them is likely to be limited.

Despite the relatively tolerant attitude to political participation in the Ottawa area, only a very small proportion of public employees actually participate directly in election campaigns. The proportion is hard to estimate, but I would guess that no more than 5 per cent of federal employees in the capital area played a direct role in any election campaign, with perhaps another 5 per cent marginally involved through such activities as making a contribution or putting up a campaign sign.

As political rights become recognized, some of these employees may become more open in their political activity. I doubt that the proportions involved will greatly increase, however. Some federal employees will choose to remain politically neutral even if the law changes because of how they see the requirements of their job. Many will remain uninvolved for the same reasons that most Canadians in the private sector do not participate in politics: lack of interest, or other claims on their time.

It would also be wrong to equate political participation with strong political partisanship. People take part in politics for many reasons, and this is surely as true of public employees as any other group in society. Someone may put up a sign or make a donation because the candidate is a neighbour or a friend. They may take part in a campaign because they have recently moved to a new community and want to make contacts, or because they want to learn more about how politics works. They may work for one party in one campaign and then change sides the next time around.

I estimate as a consequence that if 10 per cent of federal employees in Ottawa-Hull take part in political campaigns – and that is a very rough guess – perhaps only 2 to 3 per cent may have a strong and continuing involvement with a particular party. That proportion is not enough, in my view, to undermine the professionalism and the neutrality of the public service as a whole.

Nor is there compelling evidence that participation in politics makes it impossible for individual public employees to carry out their jobs in a professional and neutral manner. The existing law recognizes that possibility when it permits public employees to make public donations to a political party or permits them to return to their old jobs after standing for election as the candidate for a political party. If people are not tainted by standing as a candidate for a political party, it is hard to see how merely participating in a campaign can compromise a public employee's professional impartiality.

I would suggest, therefore, that the public service is not threatened by rampant political partisanship. When public employees gain the same freedom to act politically that other Canadians enjoy, they will probably use it just about as vigorously as most other Canadians.

Finally, I expect that if the courts strike down restrictions on political activity, not that much will change in the short run. Change will be by evolution rather than revolution.

One reason is that the laws have not been generally enforced. Ottawa's Public Service Employment Act, which dates from 1966, threatens a public servant who works for a candidate or for a political party with dismissal but requires that any complaint be initiated by a political candidate. In twenty years, not one such complaint has been lodged.

The reason that individual civil servants have grown more concerned about this issue recently is that Public Service Commission has become much more vigorous in enforcing restrictions on political activity through

internal departmental discipline. The initial court rulings will probably not touch these restrictions directly. Until the relevant laws are changed, matters of internal discipline will have to be challenged by affected employees and their unions through the grievance process and then, if necessary, through the courts. This will be a difficult process and, initially, public employees may be reluctant to make waves by taking test cases to the courts.

If a legal vacuum is opened up by the courts, should senior officials keep trying to enforce disciplinary restrictions as though the law had not changed? I suggest it would make more sense to try and devise a workable code for political activity that would be acceptable under the Charter, or ask that this be done by ministers.

The guiding principle, in my view, should be to grant public employees the rights of freedom of speech and freedom of political association that are spelled out in Article 2 of the Charter, subject only to the qualification in section 1 of "such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society."

As our case before the Federal Court demonstrated, an administrative policy on political rights cannot be said to be "prescribed by law." Hence the Public Service Commission guidelines appear to violate the Charter, as do internal departmental codes of conduct that restrict political activity.

Some principles can be discerned, however, as to what limits on fundamental freedoms for public employees can be justified in a country like Canada. The precedents that are most relevant are the systems now in force in the western provinces, the system in Great Britain, and the 1979 recommendations of Canada's Special Committee on the Review of Personnel Management and the Merit Principle, known as the D'Avignon Report. These examples mostly involve a tiered approach in which senior officials have very limited political rights, while the rights of most public employees are almost identical to people in private life.

Section 44 of Manitoba's Civil Service Act, passed during the Schreyer government in 1974, states quite specifically that: "Nothing in this act, or any other Act of the Legislature, prohibits an employee in the civil service or a person employed by any agency of the goverment . . . from being a candidate or supporting a candidate or political party in a provincial or federal general election or by election . . . or from speaking or writing on behalf of a candidate or political party in any election."

Deputy ministers and a small number of other senior employees are excluded from these rights of political activity. The law prohibits public employees from raising funds for a political party or candidate and also enjoins them from revealing or using any information concerning their department or gained through their employment with the province.

The law in Saskatchewan prohibits public employees from being compelled to take part in a campaign and prohibits them from using their position for political purposes or from engaging in political purposes during

hours of work. Section 50(1)(d) also states that no person in the public service shall "at any time take such part in political activities as to impair his usefulness in the position in which he is employed."

This law effectively permits political activity outside working hours, and there is no record of action against employees under section 50(1)(d). When the Devine government was elected in 1982, however, the new Conservative administration took unprecedented action in what amounted to a purge of employees it felt were overly sympathetic to the previous New Democratic government.

Several hundred officials were fired by the Devine government, including the heads of all the major Saskatchewan crown corporations. Allegations that they were being dismissed for cause did not stand up in the courts and in many cases the new government had to make generous severance settlements. According to Bill Knight, principal secretary to former Premier Allan Blakeney, very few of the employees who were fired had any direct involvement in elections or in political activity, and in a number of cases there was no discernible reason for the action taken. Since these firings began almost the moment the Conservatives were elected, it is clear that no effort was made to see if the employees affected were prepared and able to work in a professional, impartial manner, and therefore effectively serve the new government.

Alberta governs political activity by its employees through a Code of Conduct and Ethics which has been promulgated by order of the legislature. Section 5.1 of the code states clearly that "there is no restriction upon participation in political activity by employees," except for soliciting funds. They are restricted from divulging information relative to their job and senior employees in the executive officer class may not be granted leave of absence in order to stand as candidates.

No legislation governs political activity in British Columbia. Article 32.07 of the collective agreement between the province and the BC Government Employees' Union specifically states that: "There are no restrictions other than the oath of office on employees engaging in political activities on their own time as campaign workers." According to a survey by the National Union of Provincial Government Employees, BC employees "serve on the executive of riding associations, as delegates to conventions of political parties and/or work actively on their own time for the candidate and party of their choice."

This lesson can also be drawn from the experience in Britain, where the rules for political activity are set out in a Code of Conduct that has been agreed with the Council for Civil Service Unions. Contrary to the thrust of the federal restrictions in Canada, the UK code insists that "the intent of the rules governing political activities by civil servants is to allow them the greatest freedom to participate in public affairs."

The British public service, which includes what Canadians would call

crown corporation employees, is divided into three categories. About 65 per cent are in the "politically free" group, who are free to engage in any political activity, including standing for Parliament. About 10 per cent are in a "politically restricted" group comprising staff of executive officer grade and above, who are barred from national political activity. The remaining 25 per cent of the public service, which includes junior officer, administrative, and senior clerical positions, are in an "intermediate" grade and may engage in political activity by permission of their department.

The British system looks more restrictive than it is, because departments are urged to grant permission for political activity by employees in the intermediate group "to the maximum extent" and often do so by blanket permission. According to the code, "permission cannot normally be granted to:

(a) staff closely engaged in policy assistance to Ministers . . . ; or working in sensitive areas, e.g. the private offices of Ministers or senior officials, or areas which are acutely politically sensitive or subject to considerations of national security;

(b) staff who regularly speak for the Government or the Department in dealing with commercial undertakings, pressure groups, local government, public authorities or any other body and who may appear to these organizations to have influence in the application of government policy affecting them;

(c) staff who represent HM government in dealing with overseas governments;

(d) staff whose official duties involve a significant amount of face-to-face contact with individual members of the public and who make, or may seem to the public to be involved in making decisions involving them. . .

Britain also has a "code of discretion" which suggests that comment on political matters be "expressed with moderation" and be avoided where it might embarrass ministers or touch on a controversial issue in the employee's own department.

Although the political freedoms given public employees in Britain are qualified, they are obviously much broader than in Canada.

The D'Avignon Committee report in 1979 is based squarely on the British model. Before the Ontario Law Reform Commission Report, it was the most substantial public review yet of the issue of political rights for public employees in Canada. In its chapter on political participation, D'Avignon is unequivocal in supporting the principle of the widest political participation possible: "Simply because political participation is a right of citizens, we believe that this should be the principle that applies to public servants," the report says, "only limited in the exceptional cases where any indication of partisan political interests would compromise the reputation of the public service for impartiality or would damage the individual's effectiveness as a public servant."

The tiered system proposed by D'Avignon recommends that participation in political activities be prohibited to federal employees in the senior executive (SX) and senior management (SM) groups. This would leave them

only the right to attend political meetings, make financial contributions, and vote. They would have to resign in order to seek a nomination or run for political office.

In the intermediate group, including occupational groups such as commerce, program manager, purchasing, statistics, and personnel, "neither a blanket denial nor complete political freedom can be supported," the report says. In this group, "the right to freedom of political involvement would be subject to request by the employee and decision by the Public Service Commission." The report goes on to warn that the decision about political freedom should be made on a case-by-case basis. "No public servant should lose the freedom of political activity simply because other employees in the same group are denied it. Each such employee is entitled to a decision, based on the specific job content of the position."

In the third tier, the D'Avignon Report recommends full political freedom. This takes in all remaining occupational groups not covered in the first and second groups, that is, a very large majority of the public service.

The report is very clear in rejecting the current federal situation, in which individual civil servants have been left to interpret unclear and confusing guidelines on political activity and face the threat of serious discipline if they make a wrong decision.

> No one should be left in the position of having to interpret laws, regulations or guidelines to ascertain his or her status in this important area. If it is decided that some public servants will be allowed active participation in the political process, we recommend that all public servants be advised immediately thereafter of the specific rights accorded to them and that advertisements for vacancies and job descriptions make clear the precise degree of political participation permitted the incumbent of a position.

While that is the last official word on the issue federally, there are political promises and there has also been private members' legislation. In its 1984 election questionnaire, the Public Service Alliance asked: "Would your party be prepared to remove the current restrictions on the right of federal public service employees and grant full political rights to employees currently covered by collective agreements?"

In a considered reply, the Conservative party stated: "The PC Party favours a general removal of the restrictions on political activity, especially for those public servants covered by collective agreement. These restrictions are unnecessary and may be not justifiable under the terms of our Charter of Rights and Freedoms." The PC reply said that some senior public servants might have their rights restricted, "but we are confident that these people could be covered separately, without disenfranchizing over 200,000 public servants in the process."

Limited discussions have taken place between the Conservative government and the public service unions since September of 1984, but after

eighteen months there is still no sign of the promise being implemented.

Two models for political rights have been recently proposed in private members' legislation. The bill by NDP Member of Parliament Les Benjamin proposed to transform section 32 of the Public Service Employment Act into a code of political rights for federal employees (although deputy heads are excluded). These rights would include the right to work for a candidate or party at a general election outside working hours, the right to be a candidate, and the right to participate in meetings and activities of a political party. Employees would have the right to take leave in order to seek a nomination or to stand for election and could no longer be turned down at the discretion of the Public Service Commission, as the present law provides.

The bill I presented to Parliament is similar to the one I presented in the Ontario Legislature in 1975 and again in 1982. For all but the most senior employees, it affirms the right to engage in political activity as well as the right to express views on political matters. Federal employees who stand as candidates would be required to take leave without pay but would have the right to return to the public service if their career in politics ends.

These rights are granted provided that the employee does not engage in political activity during working hours. An employee is also forbidden to "undertake activities, assume responsibilities or make public statements on any matter in which the employee is engaged in the performance of his or her duties or to associate the position the employee occupies with any political activity." These are essentially the same constraints that normally apply to people working in the private sector.

How far?

The examples of other jurisdictions run from almost total restriction of political rights of government employees (the United States) to almost total freedom (Germany, Sweden). The practical question to be resolved in Canada is not how far political rights for public employees can go, but how far they should go bearing in mind the Charter, and bearing in mind our political traditions.

My own inclination is to say that political rights should be extended as far as possible. This is essentially the position dictated by the Charter. It calls for freedom of speech and of association, subject only to limits that are legislated, reasonable, and can be demonstrably justified.

The practice in western provinces, the findings of the D'Avignon Report and of the House of Commons Equality sub-committee, the proposals of public service unions and the British precedent all point in a common direction and suggest that there is an emerging consensus on what the law regarding political rights should entail.

As in the United Kingdom, this consensus would leave most federal

employees politically free and subject to minimal restraints. The normal duty of loyalty would require no politics on the job and no association of the job with one's political activity. For the same reason, political comment or criticism in public about the agency, the branch or perhaps the department in which one was employed would also be restricted. Leave to stand as a candidate would be available as a right, not as a privilege.

In the interest of clarity and administrative simplicity, the public service unions have suggested that the politically free group should at least cover all public employees covered by collective agreements. I tend to agree, on the grounds that this would give most public employees an easy way to determine whether or not they enjoy full political rights.

There is little dispute in Canada that it would be both acceptable and desirable to restrict political activity by deputy ministers, senior management and senior policy advisers to government. This is the group that is relied on for impartial and politically neutral advice to ministers. It amounts to perhaps 1 or 2 per cent of the federal public service. Restrictions on this group would probably be acceptable under the Charter.

In the intermediate class, the D'Avignon Report suggested that political activity be permitted only after request by an employee and a decision by the Public Service Commission. The British system is similar in principle, but tends to be more generous in practice because of the use of blanket exemptions covering whole classes of employees.

This intermediate group numbers perhaps 10 and 20 per cent of the federal public service, or between 25,000 and 50,000 employees. That is too many, in my view, to make a system of political rights "by request" either workable or acceptable under the Charter. The requirement that employees ask for political rights in a very visible way could have a chilling effect on their using this right. Moreover, the D'Avignon proposal leaves a cloud of uncertainty over this group despite the report's plea for clarity.

Public employees in the intermediate group fall into a grey area. Resolving their status as regards political activity will therefore require some compromises. There are a number of viable options. One is to provide freedom of political activity subject to certain guidelines related to the nature of the individual employee's job and possible conflict with the principle of political neutrality. An employee who felt his or her political activity might conflict with the guidelines could seek a decision from an outside body like the Public Service Commission. Likewise, a supervisor could refer a case of political activity to the commission if he or she felt that the employee was violating the guidelines.

Another option would be to spell out permitted areas of political activity for the intermediate group, and areas that would require permission. The first category would include such activity as speaking publicly on political issues not related to one's department, putting up lawn signs or playing a

minor role in an election campaign, such as canvasser or scrutineer. The second category, which would involve making a request to one's supervisor or to an outside body like the PSC, could include public, partisan activity such as seeking a nomination, standing as a candidate, joining the executive of a political party or taking a major role in directing a political campaign. If the request began with one's supervisor, then there should be an appeal to the commission or some other body outside the employee's department.

As is already evident, I had concluded by the time I presented my private member's bill that the difficulties of creating an "intermediate" group whose political rights would be qualified outweighed the benefits. Lengthy experience in the western provinces seems to confirm my view and that of the Ontario Commission, that a two-tier system for political rights will work under Canadian conditions.

A time to act

Political rights for public employees has emerged as one of the more pressing issues involving the civil liberties of Canadians, partly because the laws governing these rights are so antiquated and partly because of the new definition of civil rights in the 1982 Constitution.

Most public employees are secretaries, clerks, technicians, or blue-collar workers. In other words, they have jobs similar to other average Canadians and it is steadfastly wrong to deny them the rights other Canadians have. Even where the responsibilities of some public employees are more sensitive, the law is still too restrictive and too arbitrarily applied. And the fact that the fundamental rights of so large a sector of Canadian society have been denied for so long makes this issue one of national importance, not just the concern of one special interest group.

Edgar Gallant

Political rights for public servants: a federal perspective(2)

If public servants were angels they would know automatically and in every circumstance how to reconcile their rights as citizens and individuals with their obligations and responsibilities as members of the public service. As they are no more angelic than other Canadians, ever since Canadians have opted for a professional and impartial public service Parliament has found it necessary to regulate the degree of partisan political activity appropriate for public servants.

Section 32 of the Public Service Employment Act of 1967 does not allow deputy heads and public service employees:

(i) to "engage in work for, on behalf of or against" a candidate for election as a member of the House of Commons or the legislature of a province or of the Yukon or the Northwest Territories: or
(ii) to "engage in work for, on behalf of or against" a political party at the federal, provincial or territorial level; or
(iii) to be a candidate for election as a member of the House of Commons of the legislature of a province or of the Yukon or the Northwest Territories, except in the individual cases where prior approval of the Public Service Commission is obtained and leave of absence without pay is granted for such purpose to specific employees.

At the same time the act provides that, in addition to exercising their right to vote, public servants may make financial contributions to a candidate or a party and attend political meetings without contravening the law.

These restrictions serve three basic objectives: to protect the right of the government of the day to receive from public servants objective information and impartial advice as well as to be able to count on their loyalty; to protect the right of all Canadians to fair and equitable treatment in their dealings with the public service; and to ensure that public servants will not be subjected to partisan influence in the loyal exercise of their duties and to protect their career interests against punitive measures based on partisan political considerations. It is my conviction that these objectives are just as

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valid today as they were in 1967. It could be argued cogently that they are even more important in order to support the effective functioning of our parliamentary system of government in today's complex circumstances. The first question that arises therefore is how much further is it safe to go in accommodating the rights and freedoms of public servants as Canadian citizens, given the need to ensure that the political impartiality of the public service is not jeopardized?

Some claim that since the rights and freedoms provided for in sections 2 and 3 of the Canadian Charter of Rights and Freedoms are fundamental and are for all Canadians, including public servants, section 32 of the Public Service Employment Act regulating the political activities of public servants should be annulled. Of course the courts will decide the constitutional and legal issues involved. From what has been said so far it is clear that section 1 of the Charter will not be overlooked and that the rights and freedoms granted in sections 2 and 3 will not be regarded as absolutes, but will be interpreted in relation to other values and qualified to protect the rights of others.

Others argue that only senior public servants and the few others who are in a position to influence government policy decisions should be prevented from engaging in partisan political activities. It may be that such a move would not represent an immediate threat to the first of the three objectives enunciated above, for it is true that the majority of the public servants on whom governments rely for information and advice would still abstain from partisan politics. But the government's confidence in the loyalty of the public service as a whole could well be undermined. As for the other two objectives served by the current restrictions, they would simply have to be set aside because they would become unattainable. Indeed, with 75 per cent of the public service exempt from restrictions on partisan political activities and with a large number of these public servants actively engaged in one form or another of partisan politics, the public at large could no longer have confidence in the impartiality of the public service and many public servants would feel unable to resist partisan influence in the exercise of their duties, while many others would be left defenceless against allegations of partisanship which could compromise their career interests.

Many proponents of the paramountcy of individual rights and freedoms argue that, in assessing the impact of a proposed partisan political activity by a public servant, account should be taken only of the particular situation of that public servant and the specific activity he or she proposes to undertake. In my view it is the cumulative effect of the proposed action and others like it on the public service (or part of the public service) which must form the basis for deciding the appropriate policy. It is comparable to evaluating the impact of a lie by a given individual in a particular situation: a little lie, in a particular circumstance, may in itself not give rise to particularly unacceptable consequences; but the repetition of lies by any individual or the

multiplication of lies by different members of the same organization would in no time shatter the reputation of the individual and the organization concerned. It is naive to pretend that an increasing number of public servants could engage in openly partisan politics without the integrity and the credibility of the public service as a whole being seriously damaged.

The second question to arise has to do with the approach which would be most likely to secure appropriate behaviour on the part of public servants: the proscription of all forbidden activities or the listing of all permissible activities; the enunciation of goals and objectives together with the articulation of principles of conduct; or a combination of the two.

Any attempt to spell out, in law or in regulation, either all the specific activities and the particular circumstances that must be avoided or all the activities and environments that would be considered compatible with the notion of a politically impartial public service would be subject to very serious limitations. The range of activities concerned and the multiplicity of the particular circumstances surrounding such activities would make this approach well-nigh impossible to implement. Likewise, relying only on the enunciation of appropriate objectives, principles and values would assume an unrealistic level of personal commitment by hundreds of thousands of public servants across the country. I believe that what is required is an approach that involves both an emphasis on standards and principles of conduct and the proscription of certain political activities of a partisan nature.

I believe that:

1. all public servants should be under the obligation not to engage in partisan political activities that would jeopardize the political neutrality, both real and perceived, of the public service;
2. Parliament should enunciate the norm of conduct expected from public servants in order to ensure the political impartiality of the public service and give to a politically independent agency the mandate to develop and apply appropriate guidelines;
3. politically partisan activities to be avoided in general should include:
   - solicitation of support for or against a political party or a candidate for election;
   - solicitation, collection, distribution or administration of the finances of political parties or candidates at the federal, provincial and territorial level;
   - public involvement in the preparation or distribution of advertising on behalf of or against a party or candidate;
   - representing a candidate or a party in the capacity of an official agent or scrutineer;
   - holding an office (such as being a delegate to a party convention) or assuming an official function on behalf of a party or candidate; and
   - seeking nomination or standing for elected office in a federal, provin-

cial or territorial election unless a politically independent agency like the Public Service Commission has given its permission and granted leave of absence without pay;

4. all allegations of misbehaviour which do not appear to be in bad faith or are not based on actions having occurred more than, say, a year before receipt of the allegation should be properly investigated;
5. employees who violate the norm of good conduct in this regard should be subject to appropriate sanction; and
6. employees on leave of absence without pay for union business should be exempt from most of the provisions restricting the political activities of public servants.

Michael B. Decter

Political rights: a Manitoba perspective

Manitoba has a civil service similar in design to the federal public service. An independent Civil Service Commission, established in accordance with the Civil Service Act, is responsible for the machinery which embodies and upholds the merit principle. That machinery, also set out in law, ensures that positions under the purview of the Civil Service Commission are filled on the basis of competitive examinations relating to the duties of the position for which candidates are applying.

Until 1974 Manitoba also had legislation restricting the spare-time political work of all civil servants. In 1974 these restrictions were removed for positions below the level of deputy minister, with the exception of a prohibition on soliciting funds on behalf of a candidate or party.

In my opinion, the experience of Manitoba since 1974 demonstrates that the merit principle can be administered quite independently of restrictions on political work by public servants. In fact, in Manitoba the merit principle has been strengthened following (though not necessarily because of) the liberalization of legislation on political activities by public servants. Two examples are relevant. First, the previous practice of the Civil Service Com-

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mission had been to select and recommend for specific positions three candidates who fulfilled all the job requirements. The government then chose the person from among the recommended group whom it wished to hire. Subsequent to the 1974 changes it has become policy to recommend only a single candidate, who is then virtually always accepted by the government. In my opinion this change has strengthened the operation of the merit system in Manitoba in that it limits the possibility that a candidate can be rejected for political reasons. Secondly, prior to 1974 deputy minister positions were prerogative appointments, made outside the Civil Service Commission machinery for hiring. In the last five years, the majority of such appointments have been made on the basis of the merit principle, using the machinery of the Civil Service Commission. Again, in my view, this adds force to the argument that deregulation with respect to public servants' free-time political activity need not lead to a weakening of the merit principle.

When the changes in the restrictions on political activity were first discussed in Parliament, the debate was quite contentious, and the opposition suggested that the merit principle would be placed in jeopardy as a result of the proposed changes. However, with the arrival of the government of Sterling Lyon, the opposition became the government, and made no attempt during its term of office to reinstate the controls, or to pass regulations designating exempt categories of public service. The changes had become non-contentious, and accepted by all parties in Manitoba.

Nor has there been any decrease in public confidence in the independence of the civil service as a result of the changes in legislation. That is reflected in the fact that there is no public movement, or campaign, either within or outside the legislature, to remove the freedoms granted in 1974. Nor have there been complaints during recent elections, after the restrictions were removed, that the party in power was using government to reward its supporters, and this despite the fact that we have gone from an NDP government to a PC government, and back to an NDP government. While there have been several closely contested elections, and much opportunity for participation by public servants, the issue has never arisen, and there has been no public controversy of any sort.

I am a strong believer in the merit principle as the guarantor of a non-partisan civil service. I would oppose legislation that would have the effect of destroying the impartial nature of the civil service, or of damaging public perceptions of impartiality. In my view, the changes made in Manitoba which enable public servants to exercise their rights and freedoms to participate in electoral activity have in no way threatened or weakened the merit principle.

Stewart Goodings

Making public comment: when is it acceptable?

Our traditional assumptions about the invisible civil servant, quietly doing his or her job behind the scenes have had to be seriously reconsidered in recent years. Strikes by provincial unions of government workers, well-publicized stories of powerful and very visible federal mandarins and leaked documents by officials frustrated with government policy are all manifestations of how far we have travelled from the old-style British tradition of humble low-paid government workers doing the bidding of elected politicians.

This article will consider only one aspect of the emerging redefinition of the civil servant, namely the right to make public comment. Several recent incidents, both in this country and in Britain, have reminded us that while some of the fundamental truths about the unobtrusive civil servant remain as valid as ever, we can no longer rely on the simple answers to tell us everything about the public role of civil servants.

In this short paper, I will review two cases, one at the federal level and one in British Columbia, which illustrate the dilemmas faced by civil servants in speaking out. Both the Neil Fraser case and the Larry Whaley incidents demonstrate pretty conclusively that civil servants cannot speak publicly about matters which touch directly upon their area of employment. These experiences also show that the right to speak out cannot be tolerated if as a result the public loses its belief in the impartiality of the public service. However, in neither case is there an implication that in all circumstances, civil servants must remain silent. In fact, as Chief Justice Dickson puts it in his judgment in the Neil Fraser case, ". . . an absolute prohibition against public servants criticizing government policies would not be sensible."

Accordingly, in the second part of this paper, I want to explore those circumstances in which it may it be considered appropriate and fair for civil servants to speak out in a public manner. It is important to develop such guidelines because I believe the danger to the democratic rights of civil ser-

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vants of a total ban on public comment is greater than the damage that may be inflicted on the political system by a slavish adherence to civil servant taciturnity.

The Neil Fraser case is well known, but a brief review of its essential features may be useful. Mr. Fraser was an audit manager employed by Revenue Canada in Kingston who made a number of public criticisms of federal policies related to metrification and the plans to entrench a charter of rights in the constitution. Disciplinary action, in the form of a warning, and two suspensions, eventually culminated in dismissal. Mr. Fraser grieved the suspensions and dismissal to the Public Service Staff Relations Board, where the adjudicator concluded that while the first of Mr. Fraser's suspensions was not justified, the second suspension and dismissal were warranted. Mr. Fraser contested this decison at the Federal Court of Appeal, but the court dismissed the appeal. The matter was then taken to the Supreme Court, where there was a unanimous decision to dismiss the appeal, and thus uphold the dismissal of Mr. Fraser.

The reasons for the judgment were given on December 10, 1985 by Chief Justice Brian Dickson, and his statement has quickly become the benchmark for the whole question of public servants making public comment. After rereading Chief Justice Dickson's remarks several times, I am struck more by his arguments in favour of some freedom of speech by civil servants than by his condemnation of Neil Fraser's behaviour. Perhaps because Mr. Fraser's criticisms were so vitriolic and personal, the end result of dismissal was inescapable. Not only did Mr. Fraser display ". . . a lack of loyalty to the Government that was inconsistent with his duties as an employee," but his sustained and vigorous criticism of two major government policies impaired his ability to do his job, and raised serious doubts in the public's mind about the impartiality of the public service. So, as the Chief Justice put it, "Mr. Fraser in this case went much too far."

However, what should also be remembered about the Supreme Court judgment are the points made about the importance of free speech. Chief Justice Dickson refers to the value of "free and robust public discussion of public issues," and he says that "a blanket prohibition against all public servants would, quite simply, deny fundamental democratic rights to far too many people." He suggests it would be innocuous for relatively low-level civil servants to speak out on public issues of concern to them. And he also says it would be appropriate for a civil servant to speak out if the government engaged in illegal acts or if its policies jeopardized the life, health or safety of the public servant or others or if the criticism had no impact on the official's ability to perform effectively the duties of a public servant or on the public perception of that ability.

Let me now examine another case where an employee was dismissed as a result of a conflict between his wish to speak out and the employer's perception of the impact on his ability to do an impartial job. Larry Whaley was a

debt counsellor employed by the British Columbia Ministry of Consumer and Corporate Affairs. A major part of his job was to assist debtors by negotiating with creditors and establishing debt repayment arrangements. He became convinced that financial institutions were behaving improperly and he started what he called an "Unroyal Commission," to look into the practices of credit-granting institutions. After being warned by his employer about the possible damage that such activities could cause to the ministry and his ability to do his job, Mr. Whaley toured the province during a month of vacation leave, chairing meetings of this "Unroyal Commission" and attracting considerable publicity and negative criticism of credit institutions. He had asked for a leave of absence to continue his public advocacy activities. This was denied by the ministry and when he refused to return to work, his employment was terminated. The matter was then grieved by the employee and an arbitration was held in July 1983. The arbitrator, Mr. Rory McDonald, subsequently dismissed the appeal and upheld the employer's right to deny the leave of absence and to dismiss the employee.

The arbitrator concluded:

> I hold that the Employer held a reasoned apprehension that if Larry Whaley was allowed to continue his activities of the Commission during a leave of absence, he would harm the image of the Ministry and he would adversely affect his ability to perform and perhaps the ability of other Debt Counsellors to perform their duties satisfactorily.

In this case, even more so perhaps than in the Neil Fraser case, we see that civil servants should not voice public criticism in areas where they are directly implicated; encouraging criticism of banks is hardly likely to make them cooperative in creditor-debtor repayment plans.

This leads finally to a brief elaboration of Chief Justice Dickson's assertion that "public servants have some freedom to criticize the government." How and when will such criticism be considered acceptable?

The first essential element is that criticism must not be related to the job responsibilities of the employee making public comment. Even an indirect connection could be damaging. Secondly, lower-level civil servants should obviously be allowed greater discretion to speak out than senior officials. Assistant and deputy ministers have a policy formulation role and must accept some responsibility for government policies. Their public disaffection with government actions will cause a far greater stir than negative remarks by a clerk or lower-level supervisor. Thirdly, public comment is more acceptable by a civil servant if that person makes the remarks as a spokesperson for a public interest organization or consumer group of some kind. In this way, he or she is seen to reject a group's point of view, rather than his or her own. Fourthly, though this may be self-evident, criticism of a government *policy* is more likely to be tolerated, both by society as a whole and by

the goverment, than criticism directed toward a *person*, such as the premier or an individual minister. Fifthly, public comment by civil servants has a greater chance of acceptance, and effect for that matter, if it is phrased constructively and with discretion.

Even if all these positive factors are present, there is no guarantee that adverse repercussions will not be felt. Much will depend on other factors, such as whether the comment is offered on a TV talk show or at a sparsely attended community meeting. Still, taken together, I believe these requirements may provide the basis for a reasonable code of conduct for civil servants.

However, we have a long way to go before there is general acceptance for civil servants speaking out on public issues, and there will no doubt be many more grievances, arbitrations and court cases as individuals and jurisdictions come to grips with finding what Chief Justice Dickson described as "an appropriate balance between the right of the individual to speak freely and the duty of the individual, *qua* public servant, to fulfill his functions properly."

Bernard Ostry

Making deals: the public official as politician

I'm not sure that I enjoy being cast in the role of Maple Leaf Machiavelli, though I am glad to take it on for the sake of Professor Langford. I am to talk on this panel about making deals — the public official as politician. Perhaps it is sneaky of me to quote from Professor Langford's letter of invitation, but I'll do so anyway. Writing last December he admitted: "There is a measure of theatre in all this . . .". And I shall take him at his word, especially because of where I now sit, at the head of Canada's second largest TV network and outside the public service.

The popular image of the senior public servant, not elected but appointed, is of someone suave and conniving whose main purpose is to prevent his minister from doing anything foolish, by the simple expedient of preventing him from doing anything. This is to assume that masterly inaction is the wisest course in government, as well as the most pleasant - *dolce far niente*, as the Romans say. And often enough, to do nothing in office really is a sane decision. Sir William Osler, one of the greatest Canadians of this century, thought it a sensible course in medicine as well.

The ideal public servant, then, would be someone like Sir Humphrey Appleby, the permanent secretary in the British TV series "Yes, Minister," which TV Ontario first introduced to Canadians. Sir Humphrey is dealing with a new minister, house-training him as he puts it, and the series explores all the manoeuvres by which Sir Humphrey checks or checkmates his political master, who is rash enough to believe that he should deliver on some of the promises he made to get himself elected. The series is a comedy, and I do not say that the reality is not also a comedy. It depends on how you look at it. It is my belief that most Canadians imagine that members of the higher levels of our bureaucracies are men and women not unlike Sir Humphrey - that's to say, clowns in three-piece suits with the rosette of the Order of Canada in their buttonholes instead of knighthoods, who spend most of their working days making deals with other clowns in three-piece suits. They may be right. And if they are wrong, it is just as well that they should not take too seriously the antics of government officials and politicians, even

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though we seem to be always gouging them for more revenue in order to pay for the services they demand; or sometimes, as they see it, gouging them for revenue while cutting off the services they demand.

But let us assume that the senior public servant is a kind of non-elected politician who spends his time making deals. Man is a bargaining animal. It is built into our psyche that if we want to get something or make something happen, we have to give something in return. That is what a deal is – you give something, you get something; or you promise something to get something; or you threaten something to get something. For a promise to be effective it must be believable; for a threat to be effective it, too, must be credible.

Making deals, then, is one of the most important functions of an elected politician. Candidates make deals with party functionaries in order to be nominated; they make promises to the voters in order to get elected; and at times they make threats in order to get their way in caucus or cabinet. There is nothing sinister about this; the threats may bode no more than resignation or the embarrassment of the party in power. At all events, once elected, a politician can make deals because he or she has something to put on the table, namely, the authority that comes from votes.

The question is, what has the bureaucrat to put on the table? What can the bureaucrat give to get something in a bargain? It is widely believed that two bureaucrats can get together at a fishing club and trade in the priorities of their government: I will give up my bridge in return for future favours, so that you can have your fighter plane right now. The trouble with this picture is that I don't have any bridge, and you don't have any fighter plane. The best I can offer is to promise to persuade my minister to support your minister in cabinet. Later on you will return the favour. Unluckily, even the most docile of ministers are apt to have minds of their own. True, the bureaucrat has something to offer in the way of information. In big bureaucracies information is like money; officials hoard it and bank it. The classification of documents as top secret, secret, secret and confidential, confidential, is one result of this practice, though the universal use of photocopying machines has made it almost impossible to keep a secret. Even with the additon of shredders, there is always a chance of information getting into the "wrong" hands.

In dealing with his new minister, Sir Humphrey has the edge as long as he knows so much more about his department than the politician does, and so much more about the workings of government generally. In real life, unluckily for the British permanent secretaries affected, Mrs. Thatcher tried to undermine the bureaucrats' advantage in knowledge by making all the knights in Whitehall play musical chairs. That is, she moved all or nearly all the key permanent secretaries to new departments. Now in upper levels of government, political or permanent, few with access to her know much compared with her external advisers.

But it is not Britain we should be looking at (though it seems everyone enjoys "Yes, Minister") for a picture of the bureaucrat as politician. In our neighbour republic the founding fathers deliberately framed a constitution under which the system of checks and balances operated to ensure weak government. It may even have been their intention to assure no government at all. The American constitution has been exported to a number of other countries in South America, and in almost every instance it has become a dictatorship, doubtless because it doesn't work and wasn't meant to. It works in the United States because of the genius of a great people for making deals. Maybe we stress too much the concept of checks and balances. It might be more instructive to regard the American system as one of deals and bargains.

Studies of the practice of that kind of government and of our own might yield some kind of model that could be used to illuminate the workings of particular deals. In economics, a social science in which my status is that of spectator, in spite of my particular domestic circumstances, many things are made clear with the help of the theoretical entity called the market. It is assumed that the motive of all those dealings in the market is greed, or rather the drive to maximize earnings. In real life it seems clear that while most people would like to be millionaires, not too many people desire money so strongly that they are prepared to give their full mind to its pursuit. They find it boring to read the columns of numbers in the financial pages. They are not so crazy about money that they will marry a rich person with bad breath to get it, or take the trouble to murder Uncle Scrooge to inherit it. Nevertheless, the market as a model has proved useful and instructive. If we had such a model to simplify the complexities and confusion of the theory of public administration, the driving force of bureaucracies could perhaps be identified as personal ambition.

Well, why not? If the economists can accuse us all of greed, I can accuse us of personal ambition. Moreover, just as real life differs from the ideal market, in that most people – at any rate many people in Canada – are not in fact maximizing their earnings, so in real life bureaucrats are often moved by other considerations than personal ambition. Some, Heaven help us, may be trying to save their country. Others may be carrying out a difficult job for a pension. And so on. We are dealing with a hypothesis describing a large bureaucracy "as if" it were kept efficient and honest by the conflicts and deals of hundreds of players each seeking to exercise the maximum of personal influence. I leave it to others to elaborate such a system.

First, though, we might look at the current state of Canadian bureaucracies to see whether in fact making deals is an important function for senior bureaucrats. A quotation from a penetrating and witty essay by a former colleague, H.L. Laframboise, may be helpful. The author is a retired federal bureaucrat:

The art and practice of negotiation, he writes, has become a central element of public administration both in its internal relationships and its struggle for jurisdictional recognition. The lobbying of rights-seekers, the expansion of the selectivity mode [whatever that means], the phenomenon of the creeping mandates, and the growth in interdepartmental diplomacy all require skills in negotiation that are more finely honed than would have been required ten years ago [he was writing in 1982].

There is a ritual associated with creative negotiation which can be learned and can be taught: the initial taking of extreme positions by the opposing parties, the catharsis of rhetorical references to principles and mandates, the gradual identification of points of agreement, the sensing by both sides of what is negotiable and what is not, the exchange of concessions, the attempt at bullying, the recognition of the need to save face, the appeal to a third party, and eventually the closing of a gap or the agreement to disagree. . . . If there is a single skill that should be learned, it is that of negotiating.

Such negotiations, undertaken to settle conflicts over bureaucratic turf, are not political in the sense of party politics. They belong more in the realm of office politics. And yet as Laframboise goes on to argue, bureaucrats "must be skilled in bringing the political dimension to bear on problems, as well as the managerial and quantitative ones." The reasons for this political dimension may be obvious, but as they seem to be widely misunderstood, it is just as well to recall them.

The senior bureaucrat is an appointed official who offers advice to an elected minister. In theory the bureaucrat is entitled to offer counsel of perfection, to point the way to an ideal course of action. If the ideal course happens to be fraught with political difficulty, it is no skin off the bureaucrat's nose: he is not looking for votes. The minister, however, public-spirited though he may be and often is, cannot make use of advice that is likely to get him and his party voted out of office. Hence there is a practical need for the bureaucrat to give advice that is in tune with the minister's political imperatives. In a recent article, Professor Kenneth Kernaghan quotes a former Clerk of the Privy Council, Michael Pitfield, to the effect that "government is inextricable from the interplay of contending values" and that no senior bureaucrat "can avoid confronting the reality of choice and balance among ethical and policy values." And in an article last December in *Saturday Night* magazine on Paul Tellier, the current Clerk, Charlotte Gray remarked that her subject, while working with Pat Carney, "scored the ultimate success of a deputy minister: he made his minister look good."

It seems to me that Charlotte Gray is overstating it a bit when she lays such stress on the minister's appearance. True, Machiavelli himself argued that the Prince should seem virtuous. But something is left out of the equation when the deputy minister is presented as though he were an image groom. Mindful though he is of political expedience, his first thought will be of wise policy, or rather, that is what it ought to be. Journalists and politi-

cians deal so much in appearances and images that they are apt to forget why the largest part of governments are the bureaucracies that administer policy and help to develop them. The bureaucracy is useful as an *informed balance* to popular demands and desires and the politicians need to satisfy them, as a balance to the professional deal-makers. The time is long gone by when an American congressman, after years as Speaker of the House, could say to a reporter, "I have nothing to do with the public." Even our own appointed senators could never follow Speaker Reed's example; long habit makes those who are still active continue to court popularity, though they will never need another vote for the rest of their lives. Hence the role of bureaucrat as balancer is essential and it is easy to confuse the balancer with the deal-maker.

It could be said that in his political aspect a deputy minister should be like the Vicar of Bray in the English song, who was a high churchman under Charles I, a Puritan under Oliver Cromwell, relaxed under Charles II, Papist under James "and I had been a Jesuit but for the Revolution!" Those who would call him a turncoat have begged the question. The truth is he wears the coat of the Vicar of Bray.

As long as the senior bureaucrat was invisible, his political neutrality was normally conceded. What altered the picture were the long periods of one-party rule in various jurisdictions, together with the political novelty in Ottawa of senior bureaucrats becoming cabinet ministers, prime ministers, and even in the case of Mackenzie King, becoming more or less permanent prime minister. It was hard for the people at large, let alone for parties in opposition, to believe that the bureaucracy had not become a kind of party secretariat. It was harder still when deputy ministers were called to give evidence before parliamentary committees, their anonymity finally compromised as they tried to give candid evidence and at the same time to protect their ministers.

Thus it is not surprising to find Dalton Camp recently writing in the *Toronto Star* about the Conservative "notions of bureaucratic intransigence" that shortened the lives of the Diefenbaker and Clark administrations. But it is disturbing to read that he should find workable and acceptable the latest "solution" of appointing chiefs of staff who would "prevent the new ministers . . . from becoming captives of the system." It is turning the fiction of "Yes, Minister" into propaganda that reflects the cherished pieties of party politics. But fiction becomes reality if you saw it on TV.

As the political pendulum took a big swing, political commentators began speculating about the hit-lists of senior bureaucrats being drawn up by parties now in opposition but expected to take power. Here I must step off the stage of didactic theatre and drop the mask I have been wearing, if only because my wife and I were often among those rumoured to be destined for the tumbrils. It would be a funny story were it not for the fact that the largely erroneous perception of senior bureaucrats as political in the party sense

has led in all too many jurisdictions recently to the destruction or impending destruction of the public service. Mrs. Thatcher's astute blows at the British service have, as I have suggested, primarily reduced much of her senior bureaucracy to the status of yes men or women. The American system, of course, assures that, unless one decides to resign and make a buck spilling the beans.

But the same thing has been happening in our own country. In Saskatchewan in 1982 the Conservative party took over from the New Democrats, who had been in office for eleven years. In their electioneering, the Conservatives attacked the bureaucracy as well as the party in power. And when the new administration took office it began, with considerable courage, to take the axe to the upper echelons of the Saskatchewan public service.

The whole sad history has been documented with admirable impartiality by Hans J. Michelman and Jeffrey S. Steeves in an article in *Canadian Public Administration* published in the spring of 1985. The authors argue that the primary motive for the new government was to demonstrate that they were in control of the government and the bureaucracy. At first the premier elect had invoked the need for "professionalism," by which he meant non-partisanship and promotion on the basis of merit. After his victory, the premier said that the most senior positions in government were political appointments and would be treated as such. Waves of dismissals followed. The authors put their number at some two hundred. Heads of crown corporations were fired. A senior official was quoted as saying: "it was not a smooth moving over, rather it is more like a break, a cultural revolution, a break and a new start. With the new government, there was such a sense of mistrust, bordering on paranoia."

The implications for the future are disquieting. Michelmann and Steeves say, "both the breadth and depth of dismissals may make it more difficult to attract capable individuals for careers in the provincial civil service." After noting that we may now have seen "the beginning of a prevailing pattern, that is, a high turnover of officials with each change of government," the authors conclude "the Canadian tradition of a neutral career public service may be increasingly under challenge."

In a way the Saskatchewan experience suggests a Canadian version of the American system of wholesale patronage, under which some lady who stuffed envelopes during President Reagan's electoral campaign is paid off by being made High Commissioner of Micronesia. In the United States there is at least the excuse that a vast number of jobs which are filled by appointment here are there held by election. Everyone from the judge to the municipal dog-catcher is elected. And in the United States the private sector is organized to accept senior bureaucrats when a turnover is taking place.

Nor is the trend in Canada to suspect, smear and decimate the public service restricted to one decade, one prairie province, one political party, one jurisdiction, or one area of the media. Astute senior bureaucrats are trim-

ming their sails to the new winds of paranoia. Fear and ambition combine as politicians and public servants make deals in their own interests. Skills of negotiation, compromise, alliance-building, and so on, developed to serve the public, are used inside the system to serve a private system.

It is possible to play on the fears of new governments by hinting at disloyalty in the ranks. Loyalty itself is being redefined as obsequiousness and fawning. The honest public servant is in danger of being superseded by the courtier. The public interest is not served when the incoming politician surrounds himself or herself only with persons of his or her own political stripe. The public interest is not served when the incoming senior public servant can only advise appointments of colleagues who are clones of their future bosses. The public interest is not served when it becomes harder rather than easier to discern truth and integrity in decision-making.

Indeed, the conduct of some senior bureaucrats has become far more reprehensible than that of politicians who dreamt up "chiefs of staff." Advisers simply are not as useful to the public interest as they should be when they have exactly the same perspective as the persons they advise. Surely this country did not take seventy-five years to increase professionalism and reduce cronyism in the Canadian public service, only to end up with a politicized mediocracy? Laframboise wisely observes in the essay from which I have already quoted that bright people with good judgment are always in short supply. He believes we have created "think" positions in numbers far out of proportion to the availability of persons with the talents needed to fill them. He is kind enough not to go on to remark that the large numbers of persons who are out of their intellectual depth in those jobs may be paid as much as $65-85,000 a year.

Politicians would do well to deal with that problem rather than bad-mouth experienced officials and ride off in all directions at once in search of yes men and court wizards. As President Reagan's former budget director and thus leading deal-maker has said recently about his experience at the White House: the president "wanders in circles . . . never read anything, they lived off the tube" (unfortunately, not TVO). That from the land of the public official as politician. Canada can do better. We should be more vigilant about the deals that are made in our name, with our money. And it is bright young students, scholars, civil servants and journalists, who take the trouble to attend meetings like this on so critical a subject, who should be raising the red flag rather than a white one, not a tired old performer like me.

Michael Horsey

Taking care of business: the public official as entrepreneur

There is a feeling out there in the business community that most public servants are fat cats working within arcane systems incapable of producing results. The critics are many; the defenders few. "If only the public sector would organize itself and operate more like business," the argument goes, "many of the collective ills of the country would be resolved." While there may be some validity to the observation, the proponents of such a viewpoint are often pretty fat themselves and working with equally dated and quaint organizational infrastructure.

It is true that the public service working at its worst can be execrable. Process can dominate, with the result that there are no results at all. But business at its worst can plunge forward Rambo-like in pursuit of short-term and short-sighted goals. Battles are won and wars lost. It would seem that both the public and private sectors have been at their organizational and executional worst during these past few years of recession. However, it can be argued, private sector managers have been more successful in adjusting to the new realities.

The public sector, driven by its political leadership to tighten up and cinch its belt a few notches, has often moved in strange ways. Its managers have made decisions which appear to assume that once the unpleasantness of the recession was over, a return to the status quo was in order. Far too often government organization – denuded of bodies and stripped of various program elements – has a sickly look about it.

Of course, all is not sweetness and light in the private sector. One American commentator has suggested that "forced strategic planning" is what has been driving many businesses. As the recession took hold, and the basic uncompetitiveness of various business sectors was painfully revealed, there was a good deal of scrambling about to find answers. Advertising budgets were trimmed (perhaps to where they should have been in the first place but at the most inappropriate of times), middle management layers were stripped thin in the most arbitrary of fashions and all manner of bizarre moves taken to ensure survival. Forced it has been, but there is scant evidence of much true planning having taken place.

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It turns out, as we are now only too fully aware, the recession masked very fundamental structural changes taking place in our economy. As Dr. Gordon Robertson, the highly respected former secretary to the federal cabinet has recently observed, "It is doubtful if there has been a time in our history when so many problems of major importance for the structure and character of business in Canada have thrust themselves upon us at one time."

The nature of the structural change is something that has been tackled by any number of futurists, economists and commentators. All sorts of theories about the future nature of the economy have been advanced in a cascade of popular books. Some of it, or course, is pure pap and simply provides a little "business psychiatry" for the depressed and disenchanted who seek solutions; solutions of any kind. Most of it centres on defining an appropriate role for business enterprise in an economy that is coming to rely more and more on the service sector. Interpreted variously as the development of an information society – wired together by computers and modems – or slick visions of a new age of manufacturing – where the essentially boring and repetitive process of making things becomes magically transformed under the influence of technology and human relations measures – advice and counsel is abundantly available. Insubstantial or not, there is plenty of debate raging in the private sector about the nature of business organization required for future success.

In the public sector it is quite another story. There are few witty or even superficially popular writings available. What does exist, voluminous and ponderous in nature, is long on rhetoric and short on solutions. The ills of public sector management are all too easily traced and documented. What other form of organization must comply to such rigid examination of its every move? For a sector that owns such a large chunk of the Gross National Product, there is surprisingly little real debate.

Business Week, *Forbes*, *Fortune* and our own *Financial Post* – to name just a few of the multitude – weekly hypothesize, intellectualize and report on activities within the private sector. Public sector comment is found in passing, or in cute little stories about how defence contractors have managed to charge government hundreds of dollars for screws which are otherwise readily available at your local hardware store for a few cents. Conversely, the public sector's activities are covered by earnest and sincere trade publications which, while doing the job, do not excite much passion outside their narrow audiences. Academia and management consulting professionals also produce material that addresses issues in the correct and proper manner which the disciplines behind those endeavours demand.

It is a pity that debate about public sector organization and activity does not abound in the business and general press. Without an abundance of spirited, easily understood pop material available many opportunities to explore creative solutions to problems are lost. It is relatively easy, fun even, to

find information about a proposed merger of major corporations in the most general of daily newspapers. Almost any manager who cares to, can follow every twist and turn of events in a hostile merger bid and so learn about tactics. The "shark repellent" manoeuvre (acquire a debt-ridden, over-priced company to dissuade an unwanted suitor) or the "scorched earth" ploy (start dismantling the object company thus rendering it valueless to the acquisitor) are as entertaining to read about as they are instructive. It is highly unusual to find anything intelligible written about the creation of new ministries or the consolidation of existing ones in any publication. As anyone who has experienced such ministerial activity will readily attest, there is a fair amount of pathos involved. More importantly, some of these unnoticed events have much greater impact on the economy than the most high profile of mergers.

So what can the public sector learn from all the sound and fury generated as the private sector regroups itself? Plenty, it would seem. The private sector is moving rapidly through a process which many observers feel will result in vastly different business organizations in a post-industrial future. As those organizations evolve, it will be vital that government make adjustments as well because, like it or not, the public sector will be braided firmly into the system. The private sector, if not already in large measure there, is moving toward increased flexibility and away from vertical hierarchies in organizing its affairs. The new economy of North America, with a heavy service sector influence, demands flexibility, featuring as it does so many small business units. Similarly, mega-business organizations, such as those found in the auto industry, are moving toward new and more nimble structures.

It is hardly a secret that the service sector in future will dominate the economy. Today, despite British Columbia's heavy reliance on its resource industries, about seven in ten workers draw a pay cheque from the service sector. During the past recession it has been the service sector that has seen employment growth and it is the service sector that will expand most dramatically through the end of the decade. With thousands of small business entrepreneurs, it has aptly been described as a "marketplace of midgets." Even the traditional industrial giant is changing significantly today. Industrial companies are busy "vertically disaggregating," as they say in the business schools. There is clear evidence that industrial corporations are more and more interested in forming coalitions to do what once might have been done by a single, vertically integrated business endeavour. In this circumstance, businesses rely on a network of companies to undertake manufacturing, marketing, distribution and other functions in a contractually bound coalition.

The network concept is tremendously appealing, not only to the private sector organization of the future but also to the public sector. Let's face it, the public sector is an unlikely candidate for further growth and, in fact, all signs point to some fairly aggressive "disaggregation" taking place. There

are two ways to view the inherent challenges of this situation. Public sector managers can grumble about tight budgets and reduce service levels accordingly. Or they can critically analyze programs and help build networks utilizing existing organizations to undertake various assignments that previously may have been their sole responsibility. Better yet, they can take a leadership role in making use of the immense resources of government to develop creative solutions to assist in solving the vexations of living in such a complex society. The willing partners are legion both within and outside government. Inside, potential partners are all neatly lined up in divisions, branches and departments. Outside, they are scattered in a vast array of companies, associations and special interest organizations.

The disciplines required for an effective public servant in this environment are clearly entrepreneurial. The public sector manager must be a "deal-maker," someone who wants to put something together in order to get something done. The manager will have to have a solid understanding of business structure and organization if he or she is to enter into any successful business relationships with the increasingly flexible organizational structures encountered outside government. Similarly, that deal-maker mentality will have to dominate internal relationships in a fashion more reminiscent of two developers trying to come to agreement on a project than two nation states negotiating diplomatic exchanges. Contracts outlining roles, responsibilities and expected results should rule the day. Memoranda of understanding, frequently used inter- and intra-governmentally, should move over in favour of more "deal-oriented" documentation.

Not only must public sector organization support managers so that they can work in this entrepreneurial manner, but both managers and employees must have a solid philosophical construct. Naturally, political leadership will set an overall agenda based on its own set of philosophical principles. But to the south of that, and somewhere north of specific and direct instruction to execute various elements of the political agenda, there is a real need for some readily accessible guidelines. Decision-making for the public sector manager will be easier if it can be directed by analysing problems and opportunities in the context of such a philosophical construct. It is better if decisions can be made using quick reference points than having to jam bits of paper up through a hierarchy before anything can happen.

It is not appropriate to detail the management structures which can allow such flexibility. Different circumstances suggest different solutions. That is a task which should flow logically from a strategic planning process. In the British Columbia Ministry of Tourism two modest organizational models have been developed to provide managers with deal-making capability. The output, to date, has ranged from awful to exceptional.

Finally, any discussion of public servant as entrepreneur must deal with the question of risk. In the private sector the formulas to determine risk are reasonably well established. Certain financial criteria can be easily set.

Projects can be judged to have failed or succeeded based on these criteria. Often ultimate success or failure has somethng to do with what a friendly local banker feels about an individual, a project or where the economy is headed. Success is sweet; failure can mean considerable personal loss.

In the public sector a major component in any risk analysis relates to political considerations. The political process rightly sets the agenda and projects policies must clearly conform to the dictates of that agenda. If, from time to time, the political criteria present a faster-moving target than a perfect world would produce, so be it. The public servant as entrepreneur will factor political risk into his or her activities and move forward. The public sector does not reward the success of its people as well as it should, but nor does it punish failure very well. However, risk must be identified and, more importantly, risk taken, if anything is to actually be done, if results are to be achieved. Otherwise, it will be said that public servants are fat cats working within arcane systems. And it will be true.